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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 446

ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, PETITIONER,

vs.

EDWIN P. HAWORTH AND CORA M. HAWORTH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 5, 1936.

CERTIORARI GRANTED NOVEMBER 16, 1936.

SUPREME COURT OF THE UNITED STATES

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[fol. 2] [Caption omitted]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION

In Equity. No. 2670.

ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Corporation, Plaintiff,

vs.

EDWIN P. HAWORTH and CORA M. HAWORTH, Defendants

PETITION FOR DECLARATORY DECREE—Filed January 5, 1935

Comes now the above named plaintiff, Ætna Life Insurance Company of Hartford, Connecticut, a corporation, and, filing this, its bill or petition of complaint herein, respectfully shows the Court:

1. That this is a suit of a civil nature in equity, of which this Court is given original jurisdiction.

2. That the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00).

3. That plaintiff was, at the commencement of this action, or suit, ever since has been, and still is, a citizen, resident, and inhabitant of the state of Connecticut, a corporation duly organized and existing under the laws of the said state of Connecticut, and a non-resident of the state of Missouri; that the principal office and place of business of said plaintiff is in the city of Hartford in said state of Connecticut.

4. That defendants, Edwin P. Haworth and Cora M. Haworth, and each — them, were, at the commencement of this action, or suit, even since have been and still are,

citizens, residents, and inhabitants of the state of Missouri, and of the Western Division of the Western District [fol. 3] thereof; that the place of residence of each of said defendants is Kansas City, in said state of Missouri.

5. That an actual controversy exists between plaintiff and the said defendants as to the status of each of several policies or contracts of life insurance, heretofore issued by plaintiff to defendant, Edwin P. Haworth, as the person whose life was insured in each of said policies, each of which said policies plaintiff claims and hereby avers to be at the present time without force or effect, otherwise then as hereinafter pleaded, by reason of the same having long since lapsed as the result of the non-payment of contractual premiums thereon, as hereinafter more fully set forth.

6. That the said policies were five in number, and that the respective numbers, dates of issuance, contents, and dates of lapse or forfeiture thereof, are as follows, to-wit:

(a) Policy No. 425229, which was issued by plaintiff to defendant, Edwin P. Haworth, therein called the insured, upon June 1, 1911, in which said policy plaintiff agreed to pay for the surrender of said policy at its Home Office the sum of Ten Thousand Dollars ($10,000.00), upon receipt of due proof of the death of the said Edwin P. Haworth during the continuance of said policy, or to pay the said sum at the end of the policy year falling nearest to age eighty-five, if the insured were then living, the defendant, Cora M. Haworth, wife of the insured, being named as death beneficiary therein, with the provision that if the said Cora M. Haworth survived the insured, the amount becoming due by reason of the death of the insured should be payable to her, otherwise to the insured's personal representatives, less any unpaid premium for the current policy year; that under the terms of said policy the amount due from the plaintiff by reason of the maturity of the endowment, or the cash value or loan value, or the dividend, if paid during the life time of the insured, should be payable to the party therein called the life beneficiary, to-wit, the insured; and that said policy further provided that after two full years' premiums had been paid thereon, before default in the payment of premium, and before the policy should become a claim, the plaintiff would loan upon the sole security of the said policy at six per cent, interest payable an-

nually in advance, the whole, or at the option of the borrower, any part of the cash value shown by a table, set forth therein, at the end of the current policy year, and the cash value of dividend additions, if any, less all indebtedness to the plaintiff thereon and less also any unpaid portion of the premium and interest on the loan for the remainder of the current policy year, and that for the pur-
[fol. 4] pose of such loan the policy should be returned to the plaintiff together with a proper assignment of the same, which said assignment might be executed by the life beneficiary alone, provided the interest of such beneficiary were not then assigned.

Plaintiff states that said policy further provided that twelve months after the receipt by plaintiff of proof that, from causes originating after the delivery of said policy, the insured had become wholly, continuously, and permanently disabled, and would, for life be unable to perform any work or conduct any business for compensation or profit, then in lieu of all other values, benefits, or privileges therein provided, without further payment of premium, all premiums previously due having been paid, the plaintiff herein would pay in full settlement of said policy, upon request duly executed by the life beneficiary and assignee, if any, one-twentieth of the sum insured, and dividend additions, if any, and would pay the same amount annually thereafter until twenty such payments in all had been made, or would pay the amount of annuity shown by a table of annuities therein contained, for the age of the insured at the last birthday preceding the receipt of such proof, and the same amount annually thereafter during the lifetime of the insured, provided that at every such annuity payment satisfactory proof were furnished that the insured was then living, any indebtedness to this plaintiff on account of said policy to reduce the amount of either of said annual payments in the same proportion that said indebtedness might bear to three-fourths of the sum insured and dividend additions, if any; and plaintiff states that said policy expressly provided that said obligations were undertaken by plaintiff in consideration of the application of defendant, Edwin P. Haworth, for said policy, which application was thereby made a part of said contract, and in further consideration of the annual premium of the sum of Two Hundred Eighty-Seven Dollars and Eighty Cents

($287.80), to be paid to the company in advance at its Home Office, or to its agent, at or before five o'clock P. M., of the first day of June in each and every year during the continuance of said policy, and plaintiff states that said policy further provided that the said policy should not take effect until the first premium thereon should have been actually paid during the good health of the insured, and that, if any subsequent premium should be not paid when due, the said policy should cease, subject to the values and privileges in said policy described, except that a grace of thirty-one days, during which time the policy should remain in full force, would be allowed for the payment of any [fol. 5] premium after the first, provided that with the payment of such premium interest at the rate of six per cent, per annum were also paid thereon for the days of grace taken, but that for any reckoning therein named the time when a premium became due should be the day therein stipulated therefor, without grace; and that if after the payment of two full years' premiums thereon a default should occur in the payment of any subsequent premium, and if there should be no indebtedness to the plaintiff upon said policy, the reserve under the sum insured thereby according to the American Experience Table of Mortality, and three per cent interest, less not more than two and one-half per cent, of the sum insured would be applied without action by the owner, to extend the sum insured as non-participating temporary insurance, but without the right to loans, during the time shown in a certain table therein set out, and that at maturity of the endowment term, if the insured were then living, the plaintiff would also pay in cash, the amount, if any, shown by said table under the title of Pure Endowment and the amount of dividend additions, if any; or that, if requested by the life beneficiary and if said policy were surrendered within two months after the first unpaid premium became due, the same part of the reserve would be applied to the purchase of a paid-up non-participating stock policy for the amount shown by said table; or that, under the conditions applicable to the issue of the paid-up policy above described, or after all premiums required thereon had been paid, the plaintiff would pay for the surrender thereof a cash value at least equal to the sum which would otherwise be applicable to the purchase of the extended or paid-up insurance

provided as hereinabove stated, the amount of which was also shown by said table; that the paid-up policy or the extended insurance so provided, after having been in force two months or more, would be entitled to a cash value of as large a percentage of the reserve then existing as was therein provided for the cash value of said policy at time of default in premium payments, and the paid-up policy would be entitled to a loan equal to the cash value upon the conditions therein prescribed for a loan under said policy; and it was further provided that if there were an indebtedness upon said policy to the plaintiff when default occurred in the payment of any premium the cash value therein provided would be reduced by the amount of such indebtedness, or the sum insured extended, and the Pure Endowment, if any, or the paid-up policy which might be issued, and the dividend additions, if any, would each be reduced in the proportion which such indebtedness might bear to the total cash value.

[fol. 6] Plaintiff states that during the term of said policy, and prior to the first day of June, 1934, the defendant, Edwin P. Haworth, under the provisions of said policy, borrowed from the plaintiff, pledging to the plaintiff, as security, the said policy No. 425229, the sum of Three Thousand Eight Hundred and Twenty-seven Dollars, which, together with accrued indebtedness formed a total sum of Four Thousand and Eleven Dollars and Ninety-seven Cents, which was owed to plaintiff, upon said policy, by the said Edwin P. Haworth, upon the first day of June, 1934.

Plaintiff states that the defendant, Edwin P. Haworth, did fail and refuse to pay to plaintiff the annual premium of Two Hundred Eighty-seven Dollars and Eighty Cents, owed by said defendant to the plaintiff on said policy No. 425229, upon the first day of June, 1934, and that neither the defendant, Edwin P. Haworth, nor any other person for him, has paid said premium; and plaintiff states that as the result of said failure and refusal to pay said premium due upon June 1, 1934, the said policy, No. 425229, did under the terms and provisions thereof, lapse. Plaintiff further states that as the result thereof, and as the result of the application of the non-forfeiture provisions of said policy, aforesaid, said indebtedness from defendant, Edwin P. Haworth, in the amount of $4,011.97, was considered

duly cancelled, leaving the sum of Forty-five Dollars ($45.00) which was in the absence of other request, duly placed upon extended term insurance from June 1, 1934, to June 20, 1949, resulting in an obligation upon the part of plaintiff to pay to the death beneficiary, the defendant, Cora M. Haworth, the sum of Forty-five Dollars ($45.00), in complete settlement of said policy or contract, in the event of plaintiff's receipt of due proof of the death of the insured before June 20, 1949.

Plaintiff states that, despite said lapse of said policy, No. 425229, resulting from the non-payment of premium as aforesaid, the defendants herein are contending that defendant, Edwin P. Haworth, is and has been since long before the first day of June, 1934, wholly, continuously, and permanently disabled, and will for life be unable to perform any work or conduct any business for compensation or profit, and that as the result of said alleged disability, the defendant, Edwin P. Haworth, is and has been without obligation to pay further premiums upon said policy, and is entitled to disability benefit provisions of said policy, as hereinbefore described, including the continued life of said policy in the absence of payments of premium.

Plaintiff specifically denies that defendant, Edwin P. Haworth, was, upon and before the first day of June, 1934, [fol. 7] wholly, continuously and permanently disabled and for life unable to perform any work or conduct any business for compensation or profit, and plaintiff further specifically denies that the said defendant, Edwin P. Haworth, is, or has been, entitled to the benefit of the provisions of said policy, No. 425229, relating to permanent total disability.

Plaintiff avers that an actual controversy thus exists between the plaintiff, upon the one hand, and the defendants, and each of them, upon the other hand, as to the non-existence or existence of permanent total disability upon the part of the said defendant, Edwin P. Haworth, as to the status of said policy, No. 425229, and as to the rights and legal relations of the parties hereto; and that the plaintiff is entitled to the rendition by this Court of a declaratory judgment or decree defining the status of said policy of life insurance, declaring said policy to have lapsed, as herein averred, and defining the sole obligations and duties of plaintiff thereunder to consist in the payment of the sum of

Forty-five Dollars ($45.00) to the defendant, Cora M. Haworth, in the event of the receipt by plaintiff of due proof of the death of the defendant, Edwin P. Haworth, prior to June 20, 1949.

(b) Policy No. 537284, which was issued by plaintiff to the defendant, Edwin P. Haworth, therein called the insured, upon November 9, 1921, in which said policy plaintiff agreed to pay the sum of Five Thousand Dollars if the insured were living at the end of the term of thirty-nine years from November 9, 1921, or to pay the sum insured upon receipt at its Home Office of due proof of the prior death of the insured, in either of which cases the said policy should be surrendered to the plaintiff; that the amount becoming due from the plaintiff by reason of the death of the insured, should be payable to the death beneficiary, to-wit, Cora M. Haworth, wife of the insured and defendant herein, if she survived the insured, otherwise, to the insured's personal representatives, less any unpaid premium for the current policy year; that the amount due from the plaintiff by reason of the maturity of the endowment, or the cash value, or the loan value, or the dividends if paid during the lifetime of the insured, should be payable to the insured as life beneficiary, subject to the rights in said policy granted for varying the provisions of said policy and to any indebtedness to the plaintiff on account of said policy, including all loans made by the plaintiff as therein provided; and that said policy further provided that after two full years' premiums had been paid thereon, before default in the payment of premium, and before the policy became a claim, the plaintiff would loan upon the sole security of said policy, [fol. 8] at six per cent. interest payable annually in advance, the whole, or at the option of the borrowed any part of the cash value, as shown by a table therein set out, at the end of the current policy year, and the cash value of dividend additions, if any, less all indebtedness to the plaintiff thereon and less also any unpaid portion of the premium and interest on the loan for the remainder of the current policy year, the policy, for the purpose of such loan, to be returned to the plaintiff, together with a proper assignment of the same, which assignment might be executed by the life beneficiary alone, provided the interest of such beneficiary were not then assigned.

Plaintiff states that said policy further provided, by rider thereto attached, that if the insured should become wholly, continuously, and permanently disabled and would for life be unable to perform any work or conduct any business for compensation or profit, and satisfactory evidence of such disability were received at the Home Office of the plaintiff before the sum insured, or any instalment thereof, became payable, the plaintiff would, upon the acceptance of such proof, if all premiums previously due had been paid, waive the payment of all premiums falling due thereafter during such disability, and that if such disability existed before the insured attained the age of sixty years, the plaintiff would immediately pay to the life beneficiary the sum of Ten Dollars for each thousand dollars of the sum insured, and would pay the same sum on the same day of every month thereafter during the lifetime and during such disability of the insured; and plaintiff states that said policy expressly provided that said obligations were undertaken by plaintiff in consideration of the application for said policy, which application was thereby made a part of said contract, and in further consideration of the annual premium of Two Hundred Twenty-one Dollars and Forty-five Cents ($221.45) to be paid to the plaintiff in advance at its Home Office, or to its agent, at or before five o'clock P. M., of the 9th day of November, in each and every year until thirty-nine full years' premiums had been paid, or until the prior death of the insured; that said policy should not take effect until the first premium thereon should have been actually paid during the good health of the insured, and that if any subsequent premium were not paid when due, the said policy should cease, subject to the values and provisions therein described, except that a grace of thirty-one days, during which time the policy should remain in full force, would be allowed for the payment of any premium after the first, provided that with the payment of such premium interest at the rate of six per cent. per annum were also [fol. 9] paid thereon for the days of grace taken, but that for any reckoning therein named the time when a premium should become due should be the day therein stipulated therefor, without grace; that in and by an endorsement duly imprinted upon and forming a part of said policy it was provided that after two full years' premiums should have been paid thereon, if any subsequent premium should be-

come due and was unpaid, the extended insurance provisions of said policy should not automatically apply, anything therein to the contrary notwithstanding, but that the legal holder of said policy should be entitled at any time unconditionally to the cash surrender value described therein, provided that if said policy had not been surrendered for its cash surrender value, the plaintiff would, if so requested by the legal holder of said policy within two months after the time the first unpaid premium should become due, apply said cash surrender value to purchase either the extended insurance or the paid-up policy described therein.

Plaintiff states that the defendant, Edwin P. Haworth, failed and refused to pay the premium of Two Hundred Twenty-one Dollars and Forty-five Cents ($221.45), or any part thereof, due upon said policy upon the 9th day of November, 1931, and that neither defendant, Edwin P. Haworth, nor any one for him, has paid said premium upon said policy; and plaintiff states that as the result thereof the said policy, No. 537284, did lapse. Plaintiff further states that at the time of the lapse of the said policy the same had, under the provisions thereof, a cash value of One Thousand Seventy Dollars ($1,070.00); that a loan upon said policy had, at the request of defendant, Edwin P. Haworth, and under the provisions of said policy, been made by plaintiff to defendant, Edwin P. Haworth, in the sum of Eight Hundred Twenty-five Dollars upon January 18, 1929, to secure which loan said policy had been pledged to plaintiff by defendant, Edwin P. Haworth; that, upon August 2, 1934, the amount of said loan, together with interest thereon, from January 18, 1930, to August 2, 1934, was due and unpaid; that, upon said 2nd day of August, 1934, the principal of said loan and the accrued interest thereon were equivalent to the aforesaid cash value of said policy as of that date; and that the said cash value of said policy, which had been held in accordance with the provisions and requirements of the endorsement aforesaid, was upon said 2nd day of August, 1934, pursuant to the terms of said policy, applied to the satisfaction of said loan, with the result that the said policy thereafter was possessed of no value.

Plaintiff states that, despite said lapse of said policy, No. 537284, resulting from the non-payment of premium as

[fol. 10] aforesaid, the defendants herein are now contending that defendant, Edwin P. Haworth, is and has been since long before the 9th day of November, 1931, wholly, continuously, and permanently disabled, and for life unable to perform any work or conduct any business for compensation or profit, and that as the result of said alleged disability, the defendant, Edwin P. Haworth, is and has been without obligation to pay further premiums upon said policy and is entitled to the benefit of the permanent and total disability provisions of said policy as hereinbefore set out, including the continued life of said policy in the absence of payments of premium.

Plaintiff specifically denies that defendant, Edwin P. Haworth, was upon and before the 9th day of November, 1931, wholly, continuously and permanently disabled and for life unable to perform any work or conduct any business for compensation or profit, and plaintiff further specifically denies that the said defendant, Edwin P. Haworth, is, or has been, entitled to the benefit of the provisions of said policy, No. 537284, relating to permanent total disability.

Plaintiff avers that an actual controversy thus exists between the plaintiff, upon the one hand, and the defendants, and each of them, upon the other hand, as to the non-existence or existence of permanent total disability upon the part of the said defendant, Edwin P. Haworth, and as to the status of said policy No. 537284; that the plaintiff is entitled to the rendition by this Court of a declaratory judgment or decree defining the status of said policy of life insurance, declaring said policy lapsed, and of no force and effect, and adjudging and decreeing the absence of all obligation or duty under the terms and provisions of said policy on the part of plaintiff toward the defendants, or either of them.

(c) Policy No. N 760251, which was issued by plaintiff to defendant, Edwin P. Haworth, therein called the insured, upon October 9, 1928, in which said policy plaintiff agreed to pay the sum of Ten Thousand Dollars immediately upon receipt at its Home Office of due proof of the death of the said insured, to the beneficiary therein named, Cora M. Haworth, defendant herein, and wife of the insured; that, under the terms and provisions of said policy, during the lifetime of the insured, the right to receive all cash values, loans, and other benefits accruing thereunder, to exercise options and privileges described therein, and to agree with

the plaintiff to any change in or amendment to said policy vested alone in the insured, therein further called the life owner, subject, however, to any assignment by said life owner; and that the said policy further provided that the [fol. 11] company would make loans on the sole security of said policy, if there had been no default in payment of premium, the loan to be for any amount which, with interest, should not exceed the cash value indicated in a certain table, therein set out, for the end of the current policy year, less any unpaid premiums for such policy year, the loan value of said policy commencing at the end of the third year; that interest upon such loan was, under the terms of said policy, to be at the rate of six per cent. per annum, payable at the end of each policy year, and that if interest were not paid when due it should be added to the principal and bear interest at the same rate, provided the total indebtedness were within the limit secured by the cash surrender value of the policy, otherwise, any indebtedness to the plaintiff on account of, or secured by, said policy, to be deducted from any settlement thereunder.

Plaintiff states that said policy further provided, by rider duly attached thereto, that, if, before default in payment of premium and before attaining the age of sixty years, the insured should become totally and permanently disabled by bodily injuries or disease, and were thereby prevented from performing any work or conducting any business for compensation or profit, the plaintiff would waive the payment of premiums falling due during such disability, it being provided therein that such disability should be presumed to be permanent if existing for a period of ninety consecutive days, if satisfactory evidence had not been previously furnished that such disability were permanent, and that, in the absence of the furnishing of such evidence, the benefit should accrue from the expiration of the said ninety days, but not from a date more than six months prior to the date that evidence of such disability satisfactory to the plaintiff should be received at its Home Office, it being further provided that no benefit should accrue prior to the expiration of said ninety days unless during that period evidence satisfactory to the plaintiff should be received at its Home Office, during the life of the insured, that the total disability would be permanent, in which event the benefit would accrue from the commencement of disability.

Plaintiff states that said policy expressly provided that said obligations were undertaken by plaintiff in consideration of the annual premium of Four Hundred Thirty-one Dollars and Forty Cents ($431.40), to be paid to the plaintiff on or before the 9th day of October in each and every year during the lifetime of the insured; that if any such premium were not paid when due, said policy should cease, subject to the values and privileges therein described, ex-
[fol. 12] cept that a grace of thirty-one days, during which the policy should remain in full force and effect would be allowed for the payment of any premium after the first; that after three full years' premiums had been paid thereon, certain options might be elected by filing a written request with the plaintiff at its Home Office, accompanied by the policy, and that on default in payment of premium, if no one of the said options had been elected, the insurance would be continued automatically as extended term insurance from the due date of the premium defaulted for the sum insured for the number of years and days set forth in a certain table therein set out, except that if there were any indebtedness against the policy the extended term insurance should be for the sum insured, less the indebtedness, and for such a period as the cash value less the indebtedness would purchase according to the American Experience Table of Mortalit , and three and one-half per cent. interest.

Plaintiff states that the defendant, Edwin P. Haworth, failed and refused to pay the premium of Four Hundred Thirty-one Dollars and Forty Cents ($431.40), or any part thereof, due upon said policy upon the 9th day of October, 1931, and that neither defendant, Edwin P. Haworth, nor any one for him, has paid said premium upon said policy; and plaintiff states that, as the result thereof, the said policy No. N 760251, did lapse. Plaintiff further states that defendant, Edwin P. Haworth, had, prior thereto, in accordance with the terms and provisions of said policy, and under date of October 15, 1930, borrowed from plaintiff the full loan value of said policy, the latter being pledged to plaintiff as security for such loan indebtedness, and that, as the result thereof, under the provisions of said policy hereinbefore set out, said policy was, at the time of said lapse possessed of no cash value whatever.

Plaintiff states that despite said lapse of said policy No. N 760251, resulting from the non-payment of premium

aforesaid, the defendant herein, and each of them, are contending that defendant, Edwin P. Haworth, is and has been since long before the 9th day of October, 1931, permanently and totally disabled by bodily injuries or disease, and thereby prevented from performing any work or conducting any business for compensation or profit, and that, as the result of said alleged disability the defendant, Edwin P. Haworth, is and has been without obligation to pay further premiums upon said policy, and is entitled to the benefit of the permanent total disability provisions of said policy, as hereinbefore set out, involving the continued life of said policy in the absence of payment of premiums.

[fol. 13] Plaintiff specifically denies that defendant, Edwin P. Haworth, was, upon and before the 9th day of October, 1931, permanently and totally disabled by bodily injuries or disease and thereby prevented from performing any work or conducting any business for compensation or profit, and plaintiff further specifically denies that the said defendant, Edwin P. Haworth, is or has been entitled to the benefit of the provisions of said policy, No. N 760251, relating to permanent total disability.

Plaintiff avers that an actual controversy thus exists between the plaintiff, upon the one hand, and the defendants, and each of them, upon the other hand, as to the non-existence or existence of permanent total disability upon the part of the defendant, Edwin P. Haworth, and as to the status of said policy No. N 760251; and that the plaintiff is entitled to the rendition by this Court of a declaratory judgment or decree, defining the status of said policy of life insurance, declaring said policy lapsed, and adjudging and decreeing the absence of all existing or future obligation or duty upon the part of plaintiff, under the terms and provisions of said policy No. N 760251.

(d) Policy No. N 808571, which was issued by plaintiff to defendant, Edwin P. Haworth, therein called the insured, upon September 9, 1929, in which said policy plaintiff agreed to pay the sum of Ten Thousand Dollars immediately upon receipt at its Home Office of due proof of the death of the insured; that the amount becoming due from the plaintiff by reason of the death of the insured should be payable to the beneficiary therein named, to-wit, Cora M. Haworth, wife of the insured, and defendant herein; that during the life time of the insured, the right to receive all cash values,

loans, and other benefits accruing thereunder, to exercise all options and privileges described therein, and to agree with the plaintiff to any change in or amendment to said policy, should vest only in the insured, therein called the life owner, subject, however, to any assignment by said life owner.

Plaintiff further states that said policy, by rider thereto duly attached, provided that if before default in payment of premium and before attaining the age of sixty years the insured should become permanently and totally disabled by bodily injuries or disease, and thereby be prevented from performing any work or conducting any business for compensation or profit, the plaintiff would waive the payment of premiums falling due during such disability, it being provided therein that such disability should be presumed to be [fol. 14] permanent if existing for a period of ninety consecutive days, if satisfactory evidence had not been previously furnished that such disability were permanent, and that, in the absence of the furnishing of such evidence, the benefit should accrue from the expiration of the said ninety days, but not from a date more than six months prior to the date that evidence of such disability satisfactory to the plaintiff should be received at its Home Office, it being further provided that no benefits should accrue prior to the expiration of said ninety days unless during that period evidence satisfactory to the plaintiff should be received at its Home Office, during the life of the insured, that the total disability would be permanent, in which event the benefit would accrue from the commencement of disability.

Plaintiff states that said policy expressly provided that said obligations were undertaken by plaintiff in consideration of the annual premium of Two Hundred Seventy-one Dollars and Sixty Cents ($271.60), to be paid to the plaintiff on or before the 9th day of September, in each and every year for five years, and of the annual premium of Five Hundred Twenty-Six Dollars and Ninety Cents ($526.90), payable under the same conditions thereafter, during the life time of the insured; that if any such premium were not paid when due, the said policy should cease, subject to the values and provisions therein described, except that a grace of thirty-one days, during which the policy should remain in full force and effect, would be allowed for the payment of any premium after the first; that after three

full years' premiums had been paid thereon, for which values were shown in a certain table contained therein, and within three months after the due date of any unpaid premium certain options might be elected by filing a written request with the plaintiff at its Home Office, accompanied by the policy, and that on default in payment of premium, if no one of the said options had been elected, the insurance would be continued automatically as extended term insurance from the due date of the premium defaulted, for the sum insured, for the number of years and days set forth in the table aforesaid, except that if there were any indebtedness against the policy, the extended term insurance should be for the sum insured less the indebtedness, and for such a period as the cash value less the indebtedness would purchase according to the American Experience Table of Mortality and three and one-half per cent. interest.

Plaintiff states that the defendant, Edwin P. Haworth failed and refused to pay the premium in the sum of Two Hundred Seventy-One Dollars and Sixty Cents ($271.60), or any part thereof, due upon said policy upon the 9th day [fol. 15] of September, 1930, and that neither defendant, Edwin P. Haworth, nor any one for him, has paid said premium upon said policy, and plaintiff states that as the result thereof, the said policy No. N 808571, did lapse. Plaintiff further states that fewer than three annual payments of premium, to-wit, but one annual payment of premium, had been made upon said policy at the time of the lapse thereof, and that, as the result, said policy was, at the time of said lapse, possessed of no net or cash value, and no extended insurance of any character arose or came into being at the time of said lapse.

Plaintiff states that, despite said lapse of said policy, No. N 808571, resulting from the non-payment of premium as aforesaid, the defendants herein are contending that defendant, Edwin P. Haworth, is and has been since long before the 9th day of September, 1930, permanently and totally disabled by bodily injuries or disease and thereby prevented from performing any work or conducting any business for compensation or profit, and that, as the result of said alleged disability, the defendant, Edwin P. Haworth, is and has been without obligation to pay further premiums upon said policy, and is entitled to the benefit of the provisions of said policy relating to permanent total disability,

as hereinbefore set out, involving the continued life of said policy in the absence of payments of premium.

Plaintiff specifically denies that defendant, Edwin P. Haworth, was, upon and before the 9th day of September, 1930, totally and permanently disabled by bodily injuries or disease, and thereby prevented from performing any work or conducting any business for compensation or profit, and plaintiff further specifically denies that the said defendant, Edwin P. Haworth, is, or has been, entitled to the benefit of the provisions of said policy, No. N 808571, relating to permanent total disability.

Plaintiff avers that an actual controversy thus exists between the plaintiff, upon the one hand, and the defendants, upon the other hand, as to the non-existence or existence of permanent total disability upon the part of the said defendant, Edwin P. Haworth, and as to the status of said policy No. N 808571; and that the plaintiff is entitled to the rendition by this court of a declaratory judgment or decree defining the status of said policy of life insurance, declaring said policy lapsed, and adjudging and decreeing the absence of all existing or future obligation or duty upon the part of plaintiff, under the terms and provisions of said policy, No. N 808571.

[fol. 16] (e) Policy No. N 808572, which was issued by plaintiff to defendant, Edwin P. Haworth, therein called the insured, upon October 9, 1929, in which said policy plaintiff agreed to pay the sum of Five Thousand Dollars, immediately upon receipt at its Home Office of due proof of the death of the insured, to the beneficiary, John W. Kepner, his executors, administrators, or assigns, creditor, as interest might appear, but not to exceed Seventeen Hundred Dollars ($1700.00); the remainder, if any, to Cora M. Haworth (a defendant herein), wife of the insured, if she survived the insured, otherwise to the executors, administrators or assigns of the insured; that, under the terms and provisions of said policy, during the lifetime of the insured, the right to receive all cash values, loans and other benefits accruing thereunder, to exercise all options and privileges described therein, and to agree with the plaintiff to any change in or amendment to said policy, should vest alone in the insured, therein called the life owner, subject, however, to any assignment by said life owner, and that the beneficiary might be changed as often as desired, and such

change should take effect on receipt at the Home Office of the plaintiff, before the sum insured or any instalment thereon became due, of a written request accompanied by the policy for endorsement. Plaintiff states that, thereafter, the said insured, or life-owner, did duly send to the Home Office of the plaintiff, a written request, accompanied by the policy for endorsement that the beneficiary therein be changed to Cora M. Haworth (a defendant herein), wife of the insured, which change was accordingly made, under the terms and provisions of said policy, upon the 14th day of October, 1930.

Plaintiff further states that by the terms of a rider duly attached to and forming a part of said policy No. N 808572, it was provided that if, before default in payment of premium and before attaining the age of sixty years, the insured should become totally and permanently disabled by bodily injuries or disease and were thereby prevented from performing any work or conducting any business for compensation or profit, the plaintiff would waive the payment of premiums falling due during such disability, it being provided therein that such disability should be presumed to be permanent if existing for a period of ninety consecutive days, if satisfactory evidence had not been previously furnished that such disability was permanent and that, in the absence of the furnishing of such evidence, the benefit should accrue from the expiration of the said ninety days, but not from a date more than six months prior to the date that evidence of such disability satisfactory to the plaintiff [fol. 17] should be received at its Home Office, it being further provided that no benefit should accrue prior to the expiration of said ninety days unless during that period evidence satisfactory to the plaintiff should be received at its Home Office during the life of the insured, that the total disability would be permanent, in which event the benefit would accrue from the commencement of disability.

Plaintiff further states that said policy expressly provided that said obligations were undertaken by plaintiff in consideration of the annual premium of One Hundred Thirty-five Dollars and Eighty Cents ($135.80), to be paid to the plaintiff on or before the 9th day of October in each and every year for five years, and of the annual premium of Two Hundred Sixty-three Dollars and Forty-five Cents

($263.45), payable under the same conditions thereafter, during the lifetime of the insured; that if any such premium were not paid when due, said policy should cease, subject to the values and privileges therein described, except that a grace of thirty one days, during which the policy should remain in full force, would be allowed for the payment of any premium after the first; that after three full years' premiums had been paid thereon, certain options might be elected by filing a written request with the plaintiff at its Home Office, accompanied by the policy, and that on default in payment of premium, if no one of the said options had been elected, the insurance would be continued automatically as extended term insurance from the due date of the premium defaulted, for the sum insured, for the number of years and days set forth in a certain table therein set out, except that if there were any indebtedness against the policy, the extended term insurance should be for the sum insured less the indebtedness, and for such a period as the cash value less the indebtedness would purchase according to the American Experience Table of Mortality, and three and one-half per cent. interest.

Plaintiff states that the defendant, Edwin P. Haworth, failed and refused to pay the premium of One Hundred Thirty-five Dollars and Eighty Cents ($135.80), or any part thereof, due upon said policy upon the 9th day of October, 1930, and that neither defendant, Edwin P. Haworth, nor any one for him, has paid said premium upon said policy; and plaintiff states that, as the result thereof, the said policy No. N 808572, did lapse. Plaintiff further states that fewer than three annual payments of premium, to wit, but [fol. 18] one annual payment of premium, had been made upon said policy at the time of the lapse thereof, and that, as the result, the said policy under the provisions thereof, was, at the time of said lapse, possessed of no net or cash value, and no extended insurance of any character arose or came into being at the time of said lapse.

Plaintiff states that, despite said lapse of said policy, No. N 808572, resulting from the non-payment of premium as aforesaid, the defendants herein are contending that defendant, Edwin P. Haworth, is and has been since long before the 9th day of October, 1930, totally and permanently disabled by bodily injuries or disease and thereby prevented from performing any work or conducting any business for compensation or profit, and that, as the result of

said alleged disability, the defendant, Edwin P. Haworth, is and has been without obligation to pay further premiums upon said policy, and is entitled to the benefit of the provisions of said policy relating to permanent total disability, as hereinbefore set out, involving the continued life of said policy in the absence of payments of premium.

Plaintiff specifically denies that defendant, Edwin P. Haworth, was upon and before the 9th day of October, 1930, totally and permanently disabled by bodily injuries or disease, and thereby prevented from performing any work or conducting any business for compensation or profit, and plaintiff further specifically denies that the said defendant, Edwin P. Haworth, is or has been, entitled to the benefit of the provisions of said policy, No. N 808572, relating to permanent total disability.

Plaintiff avers that an actual controversy thus exists between the plaintiff upon the one hand, and the defendants, and each of them, upon the other hand, as to the non-existence or existence of permanent total disability upon the part of said defendant, Edwin P. Haworth, and as to the status of said policy, No. N 808572, and that the plaintiff is entitled to the rendition by this Court of a declaratory judgment or decree, defining the status of said policy of life insurance, declaring said policy lapsed, and adjudging and decreeing the absence of all existing or future obligation or duty upon the part of the plaintiff, under the terms and provisions of said policy, No. N 808572.

6½. Plaintiff avers that, as to the rights and other legal relations now existent, pertaining to the permanent and total disability benefit clauses and provisions of each and all of the five policies aforesaid, an actual controversy now [fol. 19] exists as between this plaintiff and the defendants herein, named, in that the defendants, and each of them, have, upon numerous specific occasions within the last five years, presented to this plaintiff claims, statements, and affidavits, demanding that this plaintiff perform the contractual provisions of the permanent and total disability benefit clauses of each of said policies of insurance, basing such claims and demands upon the alleged existence of total and permanent disability upon the part of the defendant Edwin P. Haworth, the performance of which provisions of said policies would include, in the absence of all further payments of premium by the defendants, or either

of them, the maintenance and recognition by plaintiff of each and all of said policies as existent, valid policies of insurance, and the making by plaintiff of cash benefit payments to the defendant Edwin P. Haworth relative to those policies so providing, as hereinbefore set out; and in that this plaintiff has consistently, and at all of said times refused to maintain and recognize said policies as valid, existing policies of insurance and has denied that defendants, or either of them, are possessed of any or further rights under the provisions of said policies, or any of them, except as hereinbefore set out, all by reason of the fact that each of said policies has lapsed, as aforesaid, by reason of the nonpayment of contractual premiums thereon, there being no permanent and total disability upon the part of the defendant, Edwin P. Haworth, in the sense of the provisions of said policies. Plaintiff states that such claims and demands, so made by defendants relative to said policies, have been made by the defendants in writing, addressed to this plaintiff; that said written statements and demands, as to the rights of the defendants under said policies, and as to the legal relations thereunder existing as between plaintiff and the defendants, have, as stated, been made upon numerous occasions, relative to the several policies involved; and that among the times and dates upon and at which such written statements, demands, and affidavits have been so presented by defendants to this plaintiff, are the 21st day of June, 1930, the 18th day of July, 1930, the 5th day of August, 1930, the 9th day of August, 1930, the 31st day of October, 1930, the 3rd day of October, 1931, the 16th day of October, 1931, the 21st day of December, 1931, the 24th day of February, 1932, the 30th day of September, 1932, the 24th day of May, 1934, the 24th day of November, 1934, and the 16th day of April, 1935. Plaintiff states that the said alleged rights of the defendants under each of said policies have been by defendants set out in one or more of said demands; that in said written demands and claims, the defendants, and particularly defendant, Edwin [fol. 20] P. Haworth, claimed and asserted their rights to benefits under the total disability provisions of said policies, referring specifically to the several policies, and stating that no default existed in the payment of premiums, that before attaining the age of sixty years the defendant Haworth had been totally and permanently disabled by disease and was thereby prevented from performing any

work or conducting any business for compensation or profit, that on previous occasions the said defendant, Haworth, had made sworn statements to the plaintiff for the purpose of asserting and claiming defendants' right to have said policies continued under the permanent and total disability provisions contained in each of them, furnishing evidence therein described of such disability, asserting that such disability had been continuous and uninterrupted, that all of said policies were, as of the dates of the demands, in full force and effect, that under the terms of said policies, and each of them, all annual premiums upon them, or any of them, becoming payable in the year 1930, or thereafter, were waived by reason of such disability, asserting that the insured was entitled to have said policies continue in full force and effect without the payment of further premiums so long as the said disability should continue, and that the respective statements were made for the purpose of asserting and claiming the said defendants' right to have said policies continue under the permanent total disability provision contained in each of said policies. Plaintiff further states that all of said demands, so addressed to plaintiff by these defendants, were of a similar tenor and character, as hereinbefore averred, and that a typical example and illustration of said demands and statements of alleged rights under said policies is that of the 30th day of September, 1932, executed by defendant, Edwin P. Haworth, and addressed to this plaintiff, together with the accompanying affidavit of an alleged attending physician, a true, correct, and verified copy of said demand and affidavit being hereto attached, marked "Exhibit F", and made a part hereof as fully as though set out verbatim at this point. Plaintiff states that by reason of the provisions of the said policies hereinbefore set out, the demands so made relative to the same, and the contentions arising thereon, there exists between the parties hereto an actual controversy as to the rights and other legal relations of the parties hereto, under the terms and provisions of said policies of insurance.

7. Plaintiff states that plaintiff is without a full, adequate, and complete remedy at law in the premises, for the following reasons, to-wit:

[fol. 21] Neither of the defendants has at this time instituted an action at law or other judicial proceeding wherein

this plaintiff would have the opportunity and right to adduce and offer the evidence which would prove the allegations and averments contained in this bill or petition, relating to the absence of permanent total di-ability upon the part of the defendant, Edwin P. Haworth, and the present status of the policies of insurance, and each of them, hereinbefore referred to. There is no means by which this plaintiff can force or induce the defendants, or either of them, to institute such an action at law, or judicial proceeding, of any character. The defendant, Edwin P. Haworth, is living at this time; the said defendant, Edwin P. Haworth, attained the age of sixty years upon the 10th day of May, 1935; and the institution of actions upon the life insurance provisions of each of said policies would not be barred by statutory limitation provisions until the running of such statutory period, following the death of the said defendant, Edwin P. Haworth. As the result of the consequent inability of this plaintiff to utilize and adduce such proof at this time, there is serious and probable danger that plaintiff may lose the benefits of such probative evidence by reason of the disappearance, illness, or death of one or more of the several witnesses within whose knowledge lie the facts constituting the evidence and proof aforesaid; and unless this Court recognizes its jurisdiction herein, and thereby affords an opportunity for the proof and decision of the issues hereinbefore referred to and determinative of the actual controversies herein shown to exist between plaintiff and the defendants, the plaintiff will suffer irreparable damage by reason of the indefinite and, by plaintiff, uncontrollable, deferment of the hearing and determination of said issues and the existince of an opportunity to utilize the said evidence so lying within the personal knowledge of the several witnesses mentioned.

Plaintiff states that, although the issue of the presence or absence of permanent total disability upon the part of the defendant, Edwin P. Haworth, is, as a matter of evidence and proof, capable of determination at this time, the plaintiff, by reason of there being no judicial decision relative thereto, is compelled annually to set aside *the* maintain substantial amounts of money as reserves upon the aforesaid policies, and each of them, and will in the future be compelled so to set aside and maintain substantial amounts of money as reserves upon said policies, and each of them,

entirely as the result of the absence of a judicial determination of the issues involved, which issues, as stated, are at this time susceptible to determination and proof, as the [fol. 22] result of all of which this plaintiff, by reason of its inability to institute an action at law in the premises, is without a full, adequate, and complete remedy at law.

In the absence of relief herein, plaintiff is further faced with the probability of being named, at some indefinite, future date, in a multiplicity of actions upon the several policies herein mentioned.

Plaintiff states that in the event the rights and other legal relations of the parties hereto, under said policies, be as claimed by this plaintiff, the total amount of the reserve to be set aside by this plaintiff consists in the sum of seventeen and 95/100 dollars ($17.95), applicable to extended insurance in the sum of forty-five dollars ($45.00), under the provisions of policy No. 425229; while, upon the other hand, if the defendants herein be correct in their demands and contentions as to the rights and other legal relations of the parties hereto, under the five policies herein referred to, the total amount of the reserves to be set up and maintained by this plaintiff in relation to the five policies herein referred to will exceed the sum of twenty thousand dollars ($20,000.00). Plaintiff states that the reserves so set up and required to be set up by this and other insurance companies represent four-fifths (4/5ths), or more, of the total liabilities of such insurance companies, and that it is essential to the protection of the policyholders of this plaintiff, to the protection of those who deal with this plaintiff, and to the protection of this plaintiff, itself, that an immediate determination take place as to the total amount of the reserves which plaintiff is obligated to carry on account of these policies. Plaintiff further states that, in the event the defendants be correct in their contentions and demands relative to the rights and other legal relations of the parties hereto, under the policies in question, this plaintiff will be obliged to set up and maintain, as if this time, thereby removing approximately the total sum from the usual channels of business, the following amounts, as to each of said policies: upon policy No. 425229, the sum of $3420.63; upon policy No. P537284, the sum of $6331.96; upon policy No. N760251, the sum of $4182.00; upon policy No. N808571, the sum of $4367.30; and upon policy No.

N808572, the sum of $2188.15. Plaintiff states that, unless the rights and other legal relations of the parties hereto, under these policies, be adjudged and determined in this suit at this time, by a declaratory judgment or decree determining the same, the plaintiff will suffer irreparable damage by reason of the existence of an unconscionable, null, and void obligation to set up and maintain the large [fol. 23] amount of reserves, aforesaid. Plaintiff states that it is without a full, adequate, and complete remedy at law in the premises; and further states that an actual controversy exists between the parties hereto as to the rights and other legal relations of said parties relative, among other things, to the existence of an obligation upon the part of this plaintiff to set up and maintain said reserves, under the terms and provisions of the five policies of insurance herein referred to.

Plaintiff states that there is at this time in full force and effect a certain statutory enactment, duly passed by the Congress of the United States, constituting section 400, Title 28, United States Code Annotated, and section 274d Judicial Code of the United States, which said statutory section is in words and figures as follows, to-wit:

"S400. (Judicial Code section 274d.) Declaratory judgments authorized; procedure.

(1) In cases of actual controversy the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of

issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not. (Mar. 3, 1915, c. 90, s 274d, as added June 14, 1934, c. 512, 48 Stat. 955.)"

Plaintiff states that by reason of each and all of the facts aforesaid the only remedy of this plaintiff, in order to avoid suffering, irreparable damage, is to bring this suit in equity in this Honorable Court, praying a declaratory judgment or decree upon the part of this Court relative to the actual controversies hereinbefore set out, and a declaration of the rights and other legal relations of the parties [fol. 24] hereto, with reference to the policies or contracts of insurance hereinbefore described.

True, correct, and duly verified copies of said policies bearing numbers 425229, 537284, N 760251, N 808571 and N 808572, are duly attached hereto, marked Exhibits A, B, C, D, and E, respectively, and each made a part hereof by reference.

Wherefore, plaintiff prays the rendition by this Court of a declaratory decree or judgment, declaring and defining the status of said policies of insurance numbered 425229, 537284, N 760251, N 808571, N 808572, and each of them, heretofore issued by plaintiff to defendant, Edwin P. Haworth, declaring policies numbered 537284, N 760251, N 808571, and N 808572, and each of them, to be at this time null and void, and without force or effect, by reason of said policies, and each of them, having lapsed because of the non-payment of premiums thereon, and declaring the obligation of plaintiff upon policy number 425229 aforesaid to consist solely in the duty to pay the sum of Forty-five Dollars ($45.00) in complete satisfaction thereof upon the death of defendant, Edwin P. Haworth; declaring the rights and other legal relations of all interested parties as herein averred; and the granting to this plaintiff of such further relief as the exigencies of the case may require, and to the Court may seem meet and proper; and that plaintiff may have its costs herein expended and incurred.

E. R. Morrison, Chas. C. Byers, Solicitors for Plaintiff.

Duly sworn to by Chas. C. Byers. Jurat omitted in printing.

PAYABLE AT DEATH OR AT END OF POLICY YEAR FALLING NEAREST AGE 85.
PREMIUMS PAYABLE DURING WHOLE TERM ANNUAL DIVIDENDS

The Ætna Life Insurance Company

"EXHIBIT A"

of Hartford, Connecticut

No. 425229 $ 10,000.

Hereby Agrees to Pay to the assignee of this policy at its Home Office in the sum of TEN THOUSAND Dollars, (herein called the sum insured) upon receipt of due proof of the death of

EDWIN P. HAWORTH

of Kansas City County of Jackson State of Missouri (herein called the insured) during the continuance of this policy or the Company will pay the said sum at the end of the policy year falling nearest to age eighty-five of the insured (if then living).

This policy is issued and accepted subject to all the conditions, benefits and provisions described on the subsequent pages hereof, and which are hereby made a part of this contract.

In Witness Whereof the said Ætna Life Insurance Company has by its President and Secretary hereunto signed this contract in the City of Hartford and State of Connecticut this First day of June 1911

Secretary

President

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PARTC L

(reverse side)

Notice—This policy is pledged to the Ætna Life Insurance Company as security for a

The Ætna Life Insurance Company

"EXHIBIT A"

of Hartford, Connecticut

No. 425229 $ 10,000.

Hereby Agrees to Pay to the assignee of this policy at its Home Office in the sum of TEN THOUSAND Dollars

then called the said insured upon receipt of due proof of the death of

EDWIN F. HAWORTH

of Kansas City County of Jackson

State of Missouri then called the insured (during the continuance of this policy or this Company will pay the said sum at the end of the policy year following next to age eighty-five of the insured if then living

This policy is issued and accepted subject to all the conditions, benefits and privileges described on the subsequent pages hereof, and which are hereby made a part of this contract.

In Witness Whereof the said Ætna Life Insurance Company has by its President and Secretary signed this contract in the City of Hartford and State of Connecticut this First day of June 1911

Secretary — President

PARTC L. 602

(reverse side)

Notice—This policy is pledged to the Ætna Life Insurance Company as security for a loan indebtedness. Particulars of same may be procured from the Home Office at Hartford, Conn.

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1 Consideration

The Foregoing Agreement *is made in consideration of the application for this policy, which application is hereby made a part of this contract, and in further consideration of the* **Annual** *premium of* **Two hundred eighty-seven** *and* 80 */* *100ths Dollars to be paid to the Company in advance at its Home Office or to its agent at or before five o'clock P. M. of the* **First** *day of* **June** *in each and every year during the continuance of this policy.*

2 Premiums when payable

3 Death beneficiary

The amount becoming due from the Company by reason of the death of the insured shall be payable to the death beneficiary as follows: **Cora M. Haworth, wife of the insured, if she survives the insured: otherwise, to the insured's** *executors, administrators or assigns, less any unpaid premium for the current policy year; and the amount due from the Company by reason of the maturity of the endowment, or the cash value or the loan value, or the dividends if paid during the lifetime of the insured, shall be payable to the party herein called the life beneficiary as follows:* **the insured** *and all such payments shall be subject to the rights herein granted for varying the provisions of this policy and to all loans made by the Company as herein provided and to any other indebtedness to the Company on account of this policy.*

4 Life beneficiary

5 Change of beneficiary

The beneficiary above designated may be changed before this policy matures as an endowment, provided the policy is not then assigned by the life beneficiary and is then returned to said Company with a request for such change duly signed by the life beneficiary alone, and such change shall take effect on endorsement of the same hereon by the Company

6 Premiums may be paid annually, semi-annually or quarterly

The Company will accept the premium payable for annual, semi-annual or quarterly periods, according to the published rates for such at the time this policy is issued, provided that before any change is made from the method of payment herein stipulated the policy shall be forwarded to the Home Office of the Company for proper endorsement

7 Conditions regarding payment of premiums

This policy shall not take effect until the first premium hereon shall have been actually paid during the good health of the insured, a receipt for which payment shall be the delivery of the policy. If any subsequent premium be not paid when due then this policy shall cease, subject to the values and privileges hereinafter described; except that a grace of thirty-one days, during which time the policy remains in full force, will be allowed for the payment of any premium, after the first, provided that with the payment of such premium interest at the rate of six per cent. per annum is also paid thereon for the days of grace taken; but for any reckoning herein named the time when a premium becomes due shall be the day herein stipulated therefor without grace.

No renewal premium shall be considered paid, except by the automatic premium loan hereinafter described unless a receipt shall be given therefor bearing the original or Lithographed signature of the Secretary or Assistant Secretary of this Company and countersigned by the agent.

8 Incontestable after one year

This policy constitutes the entire contract between the parties hereto and shall be incontestable after one year from its date of issue except for non-payment of premium; but if the age of the insured has been misstated the amount payable hereunder shall be such an amount as the premium paid would have purchased at this Company's published rate now in use for the correct age.

9 Statements of insured not Warranties

All statements made by the insured shall in the absence of fraud be deemed representations and not warranties and no such statement shall avoid the policy or be used in defence to a claim under it unless it is contained in the written application herefor and a copy of such application is endorsed upon or attached to this policy when issued.

10 Suicide

If the insured shall commit suicide within one year from the date hereof, while sane or insane, this policy shall be null and void.

11 Dividends

While this policy is in full force and no required premium is unpaid it shall share in the divisible surplus of the participating business of the Company until it becomes a claim, and the amount of the surplus accruing on the policy shall be determined and accounted for annually.

12 Application of Dividends

Such dividends shall be payable at the option of the life beneficiary by one of the following methods, provided that if no election is made the dividends will be applied in reduction of premium, or paid in cash if no premium is paid.

First Method: In reduction of the premium on this policy if the remainder of such premium is paid as herein required

Second Method: In cash.

Third Method: In paid-up additions to the insurance for an amount in each case bearing the same proportion to the amount of the dividend that the paid-up policy at that time shown in Table A bears to the corresponding cash value.

Fourth Method: In being left with the Company to accumulate at a rate of interest not less than three per cent. per annum. The dividends so accumulated, or any portion thereof, will be paid to the life beneficiary when desired during the lifetime of the insured, or, after the death of the insured, will be paid to the payee of the policy in addition to the sum insured; but no premium shall be construed as paid either wholly or in part by reason of dividends remaining with the Company.

13 Dividends may reduce the number of premiums or hasten the maturity of the policy

When such accumulated dividends and the cash value of dividend additions, if any, together with the cash value of this policy shown by Table A equal or exceed the single premium then required for a full-paid policy of the same amount on the same life and due at the same time, if this policy is surrendered to the Company a paid-up participating policy will be issued for the full sum insured, and said single premium shall be the same proportion of the sum insured that the cash value at that time bears to the corresponding paid-up policy, as shown in Table A herein; or, when such dividend values and the cash value shown by Table A together equal or exceed the sum insured hereby, the said sum insured shall then be payable.

14 Loans

After two full years premiums have been paid hereon, before default in the payment of premium, and before the policy becomes a claim, the Company will loan upon the sole security of this policy at six per cent. interest, payable annually in advance the whole, or, at the option of the borrower, any part of the cash value shown by Table A at the end of the current policy year and the cash value of dividend additions if any, less all indebtedness to the Company hereon and less also any unpaid portion of the premium and interest on the loan for the remainder of the current policy year. For the purpose of such loan the policy shall be returned to the Company together with a proper assignment of the same and said assignment may be executed by the life beneficiary alone, provided the interest of such beneficiary is not then assigned.

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15 Automatic premium loan

If a request for the automatic premium loan privilege has been signed by the life beneficiary and assignee, if any, and is received at the Company's Home Office together with this policy before default in the payment of premiums, such privilege will be endorsed hereon by the Company, and thereafter until a written revocation of said request has been duly filed with the Company the amount of any premium not paid in cash when due or within the days of grace less any dividend applicable thereon, will, without further action by the owners, be loaned by the Company in payment of such premium and charged as an indebtedness secured by this policy, subject to interest at the rate of six per cent. per annum as above described for loans, provided that the net loan value as above described is sufficient to pay the premium and interest then due.

16 When Insurance will terminate for non-payment of interest

Interest on any indebtedness hereon not paid when due shall be charged annually in advance as an indebtedness against the policy. Failure to pay any loan or interest due thereon will avoid this policy when the total indebtedness hereon to the Company shall equal or exceed the loan value at the time of such failure, but not before that time, nor until one month after notice of the same has been mailed by the Company to the last known address of the person to whom the loan was made and of the insured, and assignee, if any.

17 Values when no indebtedness

After two full years premiums have been paid hereon and default occurs in the payment of any subsequent premium if there is no indebtedness to the Company hereon the reserve under the sum insured hereby according to the American Experience Table of Mortality and three per cent. interest less not more than two and one-half per cent. of the sum insured will be applied, without action by the owner, to extend the sum insured as non-participating temporary insurance, but without the right to loans, during the time shown in the following Table A, and at maturity of the endowment term if the insured is then living the Company will also pay in cash the amount, if any, shown by said table under the title of Pure Endowment and the amount of dividend additions if any. Or if requested by the life beneficiary and if this policy is surrendered to the Company within two months after the first unpaid premium becomes due the same part of the reserve will be applied to the purchase of a paid-up non-participating stock policy for the amount shown by Table A. Or under the conditions applicable to the issue of the paid-up policy above described, or after all premiums required hereon have been paid, the Company will pay for the surrender hereof a cash value at least equal to the sum which would otherwise be applicable to the purchase of the extended or paid-up insurance above provided, the amount of which is also shown by Table A. The paid-up policy or the extended insurance above provided, after having been in force two months or more, will be entitled to a cash value of as large a percentage of the reserve then existing as is herein provided for the cash value of this policy at time of default in premium payments and the paid-up policy will be entitled to a loan equal to the cash value upon the conditions herein prescribed for a loan under this policy.

Extension

Paid-up Policy

Cash Value

18 Values when indebtedness exists

If there is an indebtedness hereon to the Company when default occurs in the payment of any premium, the cash value above described will be reduced by the amount of such indebtedness; or the sum insured extended, and the pure endowment, if any, or the paid-up policy which may be issued, and the dividend additions, if any, will each be reduced in the proportion which such indebtedness bears to the total cash value.

Issued at Age 36

TABLE A.

The values shown in this table are for one thousand dollars of insurance at the end of the year for which the premium is paid when there is no indebtedness against the policy.

The entire loan value for the end of any policy year may be available during the same year if the premium for that year has been paid.

The cash value of dividend additions, if any, will be the same proportion of such additions that the cash value shown in the table at that time bears to the corresponding paid-up policy and will be paid as herein provided for the payment of dividends. The cash values shown in this table will be increased by the cash value of the dividend additions. The amount of dividend additions, if any, will be added to the tabular amount of the paid-up policy or to the amount extended as temporary insurance, and at the expiration of the extension term the cash value of the additions will be paid on surrender of the policy.

Semi-annual or Quarterly premiums paid in addition to payments for entire years will increase the cash value or the paid-up policy value or change the term of the extended insurance and the pure endowment if any, all shown in this table, in the same proportion as an entire year's premium.

At End of Year	Extended Insurance			Paid up Policy	Cash or Loan Value
	Yrs	Days	Pure Endt		
2	1	121	-	$ 27.	$ 12
3	3	1	-	61	27
4	4	247	-	93	43
5	6	115	-	126	59
6	7	313	-	159	76
7	9	101	-	190	93
8	10	151	-	222	110
9	11	220	-	253	128
10	12	191	-	284	147
11	13	105	-	314	165
12	13	338	-	344	185
13	14	155	-	373	205
14	14	305	-	402	224
15	15	57	-	430	245
16	15	117	-	456	264
17	15	153	-	479	283
18	15	169	-	502	303
19	15	169	-	526	323
20	15	148	-	549	343
25	14	256	-	651	444
30	13	202	-	737	545
35	-	-	-	-	-

19 Cash value in event of Permanent Total Disability

Twelve months after proof is received by the Company that from causes originating after the delivery of this policy, the insured has become wholly continuously and permanently disabled and will for life be unable to perform any work or conduct any business for compensation or profit, then in lieu of all other values, benefits or privileges herein provided, without further payment of premium, all premiums previously due having been paid, the Company will pay in full settlement of this policy upon request duly executed by the life beneficiary and assignee, if any, one-twentieth of the sum insured and dividend additions, if any, and will pay the same amount annually thereafter until twenty such payments in all have been made; or will pay the amount of annuity shown by the following table of annuities for the age of the insured at the last birthday preceding the receipt of such proof and the same amount annually thereafter during the lifetime of the insured provided that at every such annuity payment satisfactory proof is furnished that the insured is then living. Any indebtedness to the Company on account of this policy will reduce the amount of either of said annual payments in the same proportion that said indebtedness bears to three-fourths of the sum insured and dividend additions if any.

TABLE OF ANNUITIES FOR EACH

ONE THOUSAND DOLLARS IN THE SUM INSURED AND DIVIDEND ADDITIONS

Age	Annuity	Age	Annuity	Age	Annuity	Age	Annuity	Age	Annuity	Age	Annuity	Age	Annuity
16	$60	26	$66	36	$74	46	$87	56	$103	66	$128	76	$162
17	61	27	66	37	75	47	89	57	105	67	132	77	166
18	61	28	67	38	76	48	90	58	107	68	135	78	170
19	62	29	68	39	76	49	92	59	109	69	139	79	174
20	62	30	68	40	77	50	93	60	111	70	143	80	179
21	63	31	69	41	80	51	95	61	113	71	146	81	184
22	63	32	70	42	81	52	96	62	116	72	149	82	189
23	64	33	71	43	82	53	98	63	118	73	152	83	193
24	64	34	72	44	84	54	99	64	121	74	155	84	197
25	65	35	73	45	85	55	101	65	125	75	158	85	201

The Company will extend the privileges and benefits for permanent total disability above described to cover the irrecoverable loss of the entire sight of both eyes, or the total and permanent loss by removal or disease of the use of both hands or of both feet or of such loss of one hand and one foot all from causes originating after the delivery of this policy and before default in the payment of premium.

Any benefit for disability within the meaning of this policy is conditioned upon the Company being permitted to examine the insured when desired within one year after the receipt of the proof, and such benefit will not be included in the paid-up policy herein provided to be issued on default in payment of premium.

20 Reinstatement

Within five years after default in payment of premium, unless a cash value has been paid for the policy or the extension period has expired, or, if this policy has not been surrendered, it may be reinstated upon evidence of insurability satisfactory to the Company and by payment of arrears of premiums with interest at the rate of six per cent per annum and by reinstatement of whatever indebtedness to the Company existed hereon at the date of default with interest from that date.

21 Modes of paying the insurance

If the policy is not assigned by the life beneficiary the life beneficiary may elect, or the payee after the death of the insured without such election may elect, by written notice filed with the Home Office of the Company, before any payment on the sum insured has been made, to have the net sum payable by the Company under this policy either as a death claim, matured endowment or as a cash surrender value paid by one of the following modes in lieu of payment in one sum provided the one sum to which every such payee would otherwise be entitled Amounts to Five Hundred Dollars or more. Any mode of payment involving life instalments shall apply only to personal payees, the right of any payee contingent upon the death of a previous payee after the death of the insured shall be only such of the instalments certain as remain unpaid at the death of the last previous payee, and any election shall take effect only upon an endorsement of the same hereon by the Company. The first instalment of annuity by either of these modes will be paid when the one sum becomes payable as hereinbefore provided, and the remaining instalments will be payable annually thereafter on the anniversary of the payment of the first instalment.

Under the third, fourth and fifth modes the attained age of any payee will be reckoned, under a death claim, as that of the last birthday of such payee preceding the death of the insured; or in case of a matured endowment or cash surrender value, as that of the last birthday preceding the time when the sum assured or the value first became payable by the Company, and satisfactory evidence of the date of birth of the payee, or [illegible] may be furnished before the [illegible] commence

22
Sum may remain with Company at interest

FIRST. The payment annually in advance of three per cent [illegible] interest on the net sum payable, and the payment of the said sum at the death of the payee [illegible] said interest, if any, and unless otherwise elected [illegible] end of any year to require the payment of the principal sum or any portion thereof

23
Instalments for limited period

SECOND. The payment of equal annual instalments for a limited number of years. The amount of instalment for each one thousand dollars of the net sum payable is shown in TABLE B

TABLE B

5	$213.[illegible]
10	113.[illegible]
15	83.[illegible]
20	68.[illegible]
25	58.65
30	52.[illegible]
40	45.21

24
Instalments during life

THIRD. The payment of equal annual instalments for a fixed period of twenty-five years and for as many full years longer as the payee shall live. The amount of instalment for each one thousand dollars in the net sum payable is shown in table C opposite the attained age of the payee

25
Life annuity

FOURTH. The payment of equal annual instalments for as many full years as the payee shall live and no longer. The amount of instalment for each one thousand dollars in the net sum payable is shown in table D opposite the attained age of the payee.

TABLE C

Age of Payee	Amount of Instalment	Age of Payee	Amount of Instalment
0	$34.[illegible]	38	$48.10
1	39.07	39	48.[illegible]
2	39.[illegible]	40	48.65
3	39.23	41	49.[illegible]
4	39.35	42	49.[illegible]
5	39.49	43	50.30
6	39.65	44	50.76
7	39.81	45	51.22
8	39.97	46	51.69
9	40.14	47	52.16
10	40.33	48	52.62
11	40.51	49	53.08
12	40.68	50	53.53
13	40.85	51	53.98
14	41.03	52	54.42
15	41.22	53	54.84
16	41.41	54	55.25
17	41.62	55	55.63
18	41.83	56	56.00
19	42.05	57	56.35
20	42.28	58	56.67
21	42.51	59	56.96
22	42.76	60	57.23
23	43.01	61	57.47
24	43.28	62	57.69
25	43.55	63	57.87
26	43.84	64	58.03
27	44.13	65	58.16
28	44.44	66	58.27
29	44.76	67	58.36
30	45.08	68	58.44
31	45.42	69	58.51
32	45.77	70	58.55
33	46.13	71	58.58
34	46.50	72	58.58
35	46.89	73	58.60
36	47.28	74	58.62
37	47.68	75 and over	58.65

TABLE D

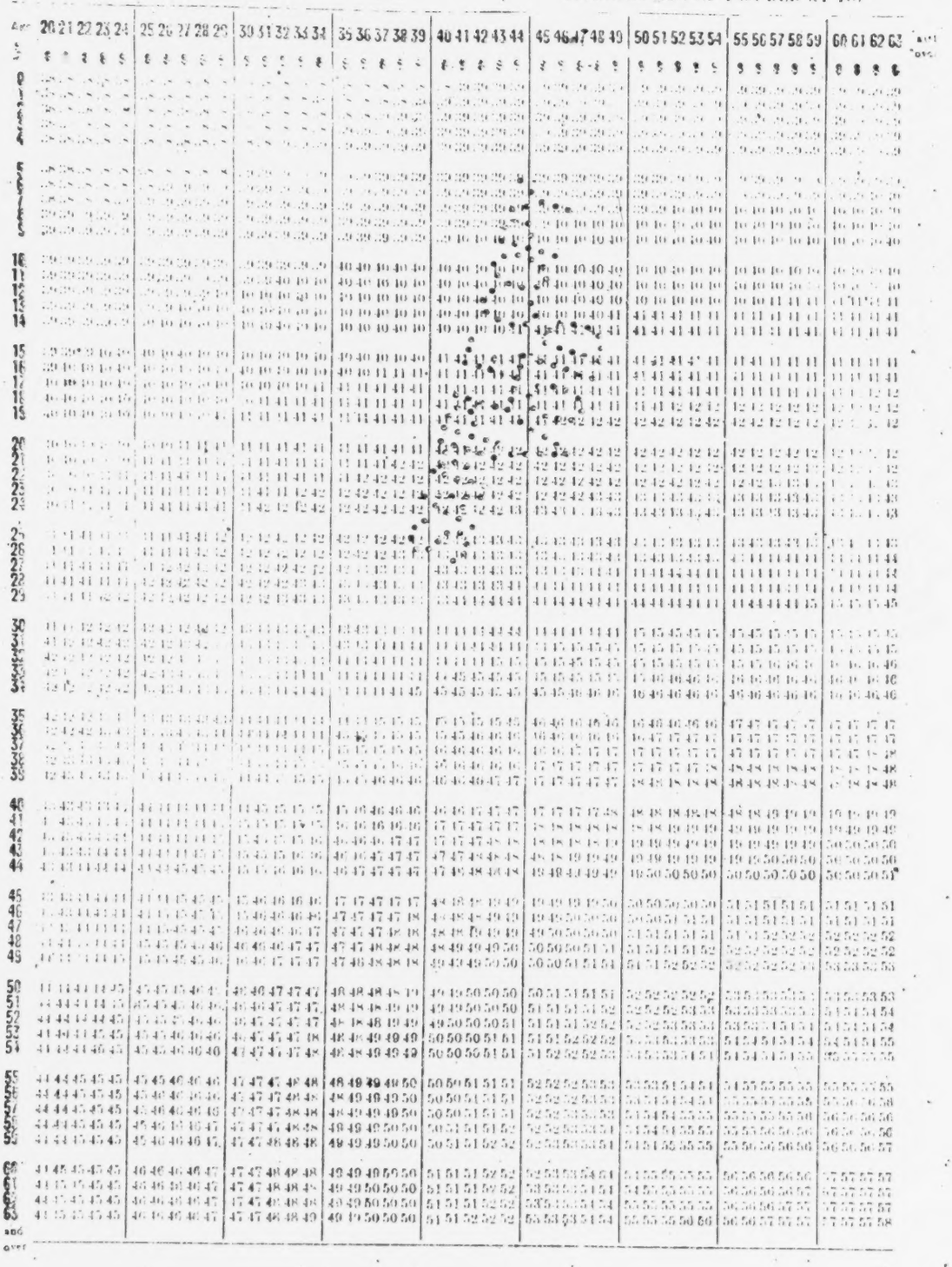
Age of Payee	Amount of Instalment	Age of Payee	Amount of Instalment
0	$40.[illegible]	43	$53.11
1	40.[illegible]	44	54.[illegible]
2	40.[illegible]	45	55.[illegible]
3	40.[illegible]	46	56.[illegible]
4	40.[illegible]	47	57.[illegible]
5	40.[illegible]	48	58.[illegible]
6	40.[illegible]	49	59.[illegible]
7	40.[illegible]	50	60.[illegible]
8	40.[illegible]	51	62.[illegible]
9	40.[illegible]	52	63.[illegible]
10	41.[illegible]	53	64.[illegible]
11	41.[illegible]	54	66.[illegible]
12	41.[illegible]	55	67.[illegible]
13	41.[illegible]	56	69.[illegible]
14	42.[illegible]	57	70.[illegible]
15	42.[illegible]	58	72.41
16	42.[illegible]	59	73.[illegible]
17	42.[illegible]	60	75.[illegible]
18	43.16	61	77.[illegible]
19	43.[illegible]	62	79.44
20	43.[illegible]	63	81.11
21	43.[illegible]	64	82.[illegible]
22	44.[illegible]	65	84.[illegible]
23	44.54	66	86.[illegible]
24	44.86	67	88.[illegible]
25	45.19	68	100.20
26	45.[illegible]	69	102.[illegible]
27	45.[illegible]	70	104.[illegible]
28	46.[illegible]	71	107.[illegible]
29	46.86	72	109.[illegible]
30	47.[illegible]	73	111.48
31	47.[illegible]	74	115.21
32	47.[illegible]	75	119.05
33	48.[illegible]	76	122.85
34	48.[illegible]	77	126.58
35	49.29	78	130.21
36	49.[illegible]	79	133.[illegible]
37	50.[illegible]	80	137.38
38	50.84	81	140.85
39	51.[illegible]	82	144.51
40	52.[illegible]	83	148.37
41	52.89	84	152.44
42	58.36	85 and over	156.74
			161.29
			166.11

26
Instalments during life of either the insured or beneficiary

FIFTH. If this policy becomes a claim as a matured endowment or for its cash value, the payment on the request of the life beneficiary, to the insured and one beneficiary jointly, and to the survivor, of equal annual instalments, for a fixed period of twenty-five years and for so many full years longer as they, or either of them, shall survive. The amount of instalment for each one thousand dollars in the net sum payable is shown in table F at the intersection of the figures for the attained ages of the insured and beneficiary

TABLE F

ATTAINED AGE OF BENEFICIARY AT SIDE — ATTAINED AGE OF INSURED AT TOP



27 **Instalments increased by dividends**

Under the above modes of paying the insurance all annual payments required by the first and second modes and the first twenty-five instalments stipulated in the third and fifth modes will be increased by such dividends as may thereafter be declared by the Company.

28 **How payable after death of payee**

Unless otherwise provided, any sum payable by the Company after the death of a payee under the first, second, third and fifth modes shall be payable to the executors, administrators or assigns of the payee.

29 **Supplementary contract**

When this policy becomes a claim, if an election has been made requiring payment by annual instalments, the policy shall, if required by the Company, be surrendered and a supplementary contract issued for the mode of payment elected.

30 **Commutation of instalments**

Unless otherwise elected the payee or payees under the second, third and fifth modes may at any time surrender the contract for the commuted value of the instalment payments yet to be made computed upon the same basis as the computations in the second mode, provided that no such commutation will be made under the third and fifth modes except after the death of the payee or payees occurring within the aforesaid twenty five year

31 **Assignments**

A duplicate of any assignment of this policy shall be filed at the Home Office of the Company, but in no case does the Company guarantee the validity of an assignment, and any claim against the Company arising under this policy made by an assignee, shall be subject to proof of interest and to any indebtedness to the Company hereon

32 **All agreements must be signed by an executive officer**

All agreements made by the Company are signed by its President, Vice President, Secretary, Assistant Secretary or Treasurer. No other person can alter or waive any of the conditions of this policy or make any agreements which shall be binding upon the Company

I hereby apply to the ÆTNA LIFE INSURANCE COMPANY for a contract of insurance upon my life, and I do hereby declare that I am in sound health and have no disease or ailment not fully set forth herein; that the statements and answers herein made and signed by me are complete and true, and I agree that they shall form a part of the contract or policy issued by said Company upon my life. I further agree that no statement or declaration made to any agent, examiner, or any other person and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of, said Company, or as charging it with any liability by reason thereof. I also acknowledge that all policies and agency contracts made by said Ætna Life Insurance Company are signed by one or more of its executive officers, and that no agent or other person not an executive officer can grant insurance or waive any condition of its policies or make any agreement which shall be binding upon said Company.

USE GOOD BLACK INK ONLY

1. a. What is your name? (Write in full your Christian name, not initials.) Catherine F Harvey Mc

b. What is your present occupation or employment? If more than one state all. (If a clerk, salesman, etc., state manufacturer or firm's name and business.) Supt State County Hospital

2. Do you contemplate changing your occupation, or traveling or residing south of the 32d degree or north of the 60th degree of north latitude? If so, state particulars. No

3. a. In what employments have you heretofore been engaged? Same for 5 yrs prior to that Housekeeping

b. Have you been, or are you now, employed in the Army or Navy? No

c. Are you, or have you ever been connected with the manufacture or sale of malt or spirituous liquors? If so, when, and how? No,

4. a. What is the Place and date of your Birth? St Joseph, Co Mo Year, 1872 Month, May Day, 16

b. What is your age next Birthday? 37 Years. c. Are you married? Yes

Street and Number | City or Town | County | State

5. a. Where do you reside? 2929 Main St Kansas City Jackson Mo.

b. What is your business address? " " " "

6. a. What kind of a Policy is desired? Life - participating - Dec. on age 65

b. Amount of Insurance $10000 $278.80 Annually.

c. Shall the premiums be payable during the whole term of Policy? Yes e. Premium $ Semi-Annually.

d. If not, during how many years shall the premiums be payable? $ Quarterly.

If a Participating Policy, the dividends unless otherwise requested shall reduce premiums or be paid in cash.

7. What is the Name, Residence and Relationship of the person to be benefited by this Policy in event of your death? (If not a near relative, state who interest the proposed person may have.) Cora Ill Hanson Wife

It is desired that the Policy be written with respect to the Beneficiary as nearly in accordance with the above request as the experience of the Company will suggest as being most likely to meet the requirements, and the acceptance of the Policy so written will be regarded as an acknowledgment that the Company has complied with the wishes of the applicant.

8. Have you personally employed or consulted any Physician during the last five years? If so, give names and residences of all. Dr Jno W Kepner, Kansas City Mo

10. a. What amount of insurance is now in force on your life, and in what Companies or Associations? None

b. Approximate dates of last insurance granted by each.

9. Has any proposal or application ever been made or submitted to any Company, Association, Agent or Physician, for which insurance on your life is now pending or has not been granted for the full amount or some kind as applied for? If so, state particulars, and name such Companies, Associations, Agents (or Physicians). No except Equitable

11. Has any Physician, Company, Association or Agent ever expressed an unfavorable opinion on your life with reference to life insurance or refused to reinstate insurance that had lapsed? If so, state particulars. Not to my knowledge

(Use this space for further explanations to the above questions if necessary.) Equitable 85 Iowa about 90 and Prudential no report

Dated May 26 1911 Witness C. E. Dailey Applicant sign here Catherine F Harvey

The Answers to the following questions are to be filled in by the EXAMINING PHYSICIAN who must see and witness the signature of the applicant below. If further explanation as to any of the following questions is given, IT MUST BE DISTINCTLY UNDERSTANDING AT THE TIME OF THE EXAMINATION, and noted by the number of the question to which the explanation applies. Use Good BLACK INK ONLY

12. FAMILY RECORD.

	LIVING Age?	Health?	DEAD Age?	Cause of Death?	Date of Death?
Father,	about		37	Bowel trouble	1880
Father's Father,			65	Unknown	
Father's Mother,			80	Old age	1897
Mother,			39	Consumption	1883
Mother's Father,			86	Dropsy	1910
Mother's Mother,			70	Dropsy	Unknown
Brothers,	one	46			
Sisters,	2		25	Consumption	1887
			2	Croup	1889

13. Have you ever had any of the following diseases? (Answer Yes or No opposite each. If Yes, state the date, duration and severity of each time you have had it.)

Abscess,	No	Consumption,	No	Enlargement of Veins,	No	Gravel,	No
Apoplexy,	No	Disease of the Heart,	No	Fits,	No	Habitual Headache,	No
Appendicitis,	No	Disease of Liver,	No	Fistula,	No	Hip Joint Disease,	No
Asthma,	No	Dropsy,	No	Gall Stone,	No	Jaundice,	No
Bronchitis (Chronic),	No	Enlargement of Glands,	No	Gout,	No	Neuralgia,	No
Paralysis,	No	Tumors,	No				
Rheumatism,	No	Ulcers,	No				
St. Vitus's Dance,	No	Venereal Disease,	No				
Spitting of Blood,	No	Vertigo,	No				
Syphilis,	No						

14. Have you had Inflammatory Rheumatism? If so, state severity and date of each attack. Mild

15. Are you subject to Dyspepsia, Dysentery, or Diarrhoea? No,

16. Have you had during the last seven years, any disease or severe sickness? If so, state the particulars of each case, and the name of the attending physician. No

17. Have you either gained or lost weight during the last five years? If so, state particulars. Gained 5 lbs in 5 years

18. Have you ever changed your residence on account of your health? If so, state particulars. No,

19. Have you during the last five years lived in the same house with any one suffering from consumption? If so, state particulars. No

20. Which parent do you resemble in height, weight and general characteristics. Father

21. Have you ever been intemperate in the use of either malt or spirituous liquors, or used any drug habitually? No,

22. Do you use either malt or spirituous liquors daily or nearly every day? If so, what is used and the approximate amount? No

23. Have you ever taken any cure or treatment for any habit? If so, what, and when? No,

Additional Questions to be answered when the Applicant is a Woman.

24. a. Are you married? b. How long married? c. Number of labors? d. Date of last labor?

25. a. Were labors normal? b. Have you miscarried and if so from what cause and at what dates? c. Are you now pregnant?

26. a. Is your menstruation regular and normal? b. Is there any organic disease of uterus or appendages, or is any suspected? c. Are there any tumors in the breasts or any other part of the body?

27. If a widow, state date and cause of husband's death?

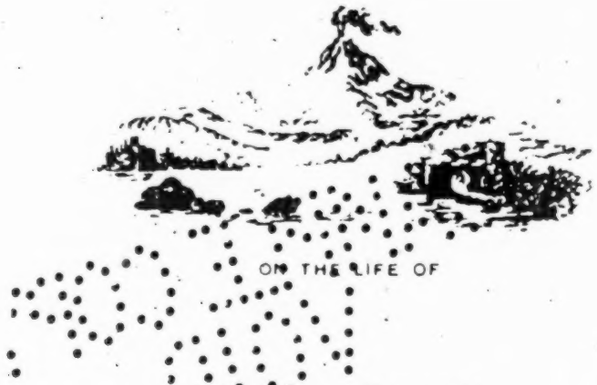
Dated at Kansas City Mo this 25 day of May 1911 Witness C. E. Dailey

IN PRESENCE OF Applicant sign here Catherine F Harvey

MEDICAL CERTIFICATE ON THE REVERSE OF THIS PAGE

No. 425229

ÆTNA LIFE
INSURANCE COMPANY
OF
HARTFORD, CONN.



ON THE LIFE OF

Edwin P. Haworth

SUM INSURED	$	10,000.
Annual PREMIUM	$	287.80
AGE		36
DATE		June 1, 1911

EXAMINED

PAYABLE AT DEATH OR AT END OF POLICY YEAR
FALLING NEAREST TO AGE 85
PREMIUMS PAYABLE DURING WHOLE TERM
ANNUAL DIVIDENDS

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Age 46 Years

The Ætna Life Insurance Company

of Hartford, Connecticut

No. 537284 $ 5000.

(herein called the Company)

"EXHIBIT B"

HEREBY AGREES TO PAY

FIVE THOUSAND DOLLARS

(herein called the sum insured) if EDWIN P. HAWORTH

of Kansas City County of Jackson State of Missouri (herein called the insured) is living at the end of the term of Thirty-nine years from the date hereof, or will pay the sum insured upon receipt at its Home Office of due proof of the prior death of the insured, and in either case this policy shall be surrendered to the Company.

This policy is issued and accepted subject to all the conditions, benefits and privileges described on the subsequent pages hereof, and which are hereby made a part of this contract.

IN WITNESS WHEREOF the *ÆTNA LIFE INSURANCE COMPANY* has by its President (or Vice-President) and Secretary (or Assistant Secretary) signed this contract in the City of Hartford and State of Connecticut this Ninth day of November 1921

James B. Skinner — *Secretary*

Robt Brainard — *President*

Registrar

PREMIUMS PAYABLE DURING 39 YEARS OR UNTIL PRIOR DEATH. INSURANCE PAYABLE AT DEATH OR AT END OF 39 YEARS. ANNUAL DIVIDENDS.

1500
6-18

P. C.

(reverse side)

This policy is pledged to the Aetna Life Insurance Company as security for a

Aetna Life Insurance Company

of Hartford, Connecticut

No. 537284 $ 5000.

(herein called the Company)

"EXHIBIT B"

HEREBY AGREES TO PAY

FIVE THOUSAND DOLLARS

(herein called the sum insured) if EDWIN P. HAWORTH

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Registrar

Chas. E. Beaumont — *President*

PREMIUMS PAYABLE DURING 39 YEARS OR UNTIL PRIOR DEATH. INSURANCE PAYABLE AT DEATH OR AT END OF 39 YEARS. ANNUAL DIVIDENDS.

1500
6-18

P. E.

(reverse side)

Notice—This policy is pledged to the Aetna Life Insurance Company as security for a loan indebtedness. Particulars of same may be procured from the Home Office at Hartford, Conn.

C. J. Moody

1 **Consideration**

The Foregoing Agreement *is made in consideration of the application for this policy, which application is hereby made a part of this contract and a copy of which is attached hereto, and in further consideration of the* annual *premium of* Two hundred twenty-one *and* 45/100ths *Dollars to be paid to the Company in advance at its Home Office or to its agent at or before five o'clock P. M. of the* Ninth *day of* November *in each and every year until* Thirty-nine *full years' premiums have been paid or until the prior death of the insured.*

2 **Premiums when payable**

The amount becoming due from the Company by reason of the death of the insured shall be payable to the death beneficiary as follows: Cora M. Haworth, wife of the insured, if she survives the insured; otherwise, to the insured's *executors, administrators or assigns, less any unpaid premium for the current policy year; and the amount due from the Company by reason of the maturity of the endowment, or the cash value or the loan value, or the dividends if paid during the lifetime of the insured, shall be payable to the life beneficiary as follows:* the insured *and all such payments shall be subject to the rights herein granted for varying the provisions of this policy and to any indebtedness to the Company on account of this policy, including all loans made by the Company, as herein provided.*

3 **Death beneficiary**

4 **Life beneficiary**

5 **Change of beneficiary**

Subject to any assignment hereof, the beneficiary of this policy may be changed as often as desired, and such change shall take effect on receipt at the Home Office of the Company, before the sum insured or any instalment thereof becomes due, of a request signed by the life beneficiary accompanied with the policy for proper endorsement.

6 **Premiums may be paid annually, semi-annually or quarterly**

The Company will accept the premium payable for annual, semi-annual or quarterly periods, according to its published rate for such at the time this policy is issued, provided that before any change is made from the method of payment herein stipulated the policy shall be forwarded to the Home Office of the Company for proper endorsement

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7 Conditions regarding payment of premiums

This policy shall not take effect until the first premium hereon shall have been actually paid during the good health of the insured, a receipt for which payment shall be the delivery of the policy. If any subsequent premium be not paid when due then this policy shall cease, subject to the values and privileges hereinafter described, except that a grace of thirty-one days, during which time the policy remains in full force, will be allowed for the payment of any premium after the first, provided that with the payment of such premium interest at the rate of six per cent. per annum is also paid thereon for the days of grace taken; but for any reckoning herein named the time when a premium becomes due shall be the day herein stipulated therefor without grace.

No renewal premium shall be considered paid unless a receipt shall be given therefor bearing the original or lithographed signature of the Secretary or Assistant Secretary of the Company and countersigned by the agent.

8 Incontestable after one year

This policy and the application herefor constitute the entire contract between the parties hereto and it shall be incontestable after one year from its date of issue except for non-payment of premium, but if the age of the insured has been misstated the amount payable hereunder shall be such an amount as the premium paid would have purchased at the Company's published rate now in use for the correct age.

9 Statements of insured not warranties

All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall avoid the policy or be used in defence to a claim under it unless it is contained in the written application herefor and a copy of such application is endorsed upon or attached to this policy when issued.

10 Suicide

If the insured shall commit suicide within one year from the date hereof, while sane or insane, this policy shall be null and void.

11 Dividends

Until this policy becomes a claim it shall be entitled to share in the divisible surplus of the participating business of the Company at the end of each policy year, and the amount of surplus accruing under it shall then be determined and accounted for, provided the insured is then living and there has been no default in the payment of premium.

12 Application of dividends

Such dividends shall be payable at the option of the life beneficiary by one of the following methods, provided that if no election is made the dividends will be paid in cash.

First Method: In reduction of the premium on this policy if the remainder of such premium is paid as herein required.

Second Method: In cash.

Third Method: In paid-up additions to the sum insured for an amount in each case bearing the same proportion to the amount of the dividend that the paid-up policy at that time shown in Table A bears to the corresponding cash value.

Fourth Method: In being left with the Company to accumulate at a rate of interest not less than three per cent. per annum. The dividends so accumulated, or any portion thereof, will be paid to the life beneficiary when desired during the lifetime of the insured; or after the death of the insured, will be paid to the payee of the policy in addition to the sum insured; but no premium shall be construed as paid, either wholly or in part, by reason of dividends remaining with the Company.

13 Dividends may reduce the number of premiums or hasten the maturity of the policy

When the total cash value of this policy, consisting of said accumulated dividends, the cash value of dividend additions, if any, and the cash value shown by Table A, less any indebtedness secured hereby, equals the net single premium for a policy of the same kind and amount as the sum insured, issued on the same life and due at the same time, a paid-up participating policy will be issued for the sum insured if this policy is then duly surrendered to the Company for that purpose. Said single premium will be the same proportion of the sum insured that the tabular cash value at that time bears to the corresponding paid-up policy shown by Table A. Or, when such total cash value equals the sum insured, it shall then be due and payable.

14 Loans

After two full years' premiums have been paid hereon, before default in the payment of premium, and before the policy becomes a claim, the Company will loan upon the sole security of this policy at six per cent. interest payable annually in advance the whole or, at the option of the borrower, any part of the cash value shown by Table A at the end of the current policy year, and the cash value of dividend additions if any, less all indebtedness to the Company hereon and less also any unpaid portion of the premium and interest on the loan for the remainder of the current policy year. For the purpose of such loan the policy shall be returned to the Company together with a proper assignment of the same and said assignment may be executed by the life beneficiary alone, provided the interest of such beneficiary is not then assigned.

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15 Automatic premium loan

If a request for the automatic premium loan privilege has been signed by the life beneficiary, and assignee if any, and is received at the Company's Home Office together with this policy before default in the payment of premium, such privilege will be endorsed hereon by the Company, and thereafter until a written revocation of said request signed by the life beneficiary, and assignee if any, has been endorsed hereon by the Company, the amount of any premium not paid in cash when due or within the days of grace, less any dividend applicable thereon, will, without further action by the owners, be loaned by the Company in payment of such premium and charged as an indebtedness secured by this policy, subject to interest at the rate of six per cent. per annum as above described for loans, provided that the net loan value as above described is sufficient to pay the premium and interest then due.

16 When insurance will terminate for non-payment of interest

Interest on any indebtedness hereon not paid when due shall be added to the principal and reckoned as a part thereof. Failure to pay any loan or interest due thereon will avoid this policy when the total indebtedness to the Company hereon shall equal or exceed the loan value at the time of such failure, but not before that time, nor until one month after notice of the same has been mailed by the Company to the last known address of the person to whom the loan was made and of the insured, and assignee if any.

17 Non Forfeiting values

The value of this policy to be applied as hereinafter provided shall be the reserve hereon, including that of dividend additions if any, according to the American Experience Table of Mortality and three per cent. interest, less a charge of not more than two and one-half per cent. of the sum insured (which charge will gradually decrease and after the fourteenth policy year will in no case exceed one-twentieth of one per cent. of the sum insured, and dividend additions if any), and less also any indebtedness to the Company secured by this policy.

Extended insurance

After two full years' premiums have been paid hereon and any subsequent premium becomes due and is unpaid the value above described will, without action by the owners, be applied to extend this policy as non-participating paid-up term insurance, without the right to loans, for the sum insured, and dividend additions if any, less any indebtedness to the Company hereon. If said value is more than sufficient to purchase such term insurance to the end of the endowment term of this policy the excess thereof will be applied in a like manner to the purchase of a non-participating pure endowment payable at the end of such endowment term if the insured is then living.

Paid-up policy

If requested by the life beneficiary, and assignee if any, and if this policy is surrendered to the Company within the first two months of such extended term insurance, said value will be applied to the purchase of a paid-up non-participating stock policy payable at the end of the endowment term of this policy, if the insured is then living, or at the prior death of the insured,

The period of term insurance or the amount of paid-up policy will be such as said value will purchase used as a net single premium at the attained age of the insured calculated by said table of mortality and rate of interest.

The extended term insurance, and the pure endowment if any, or the paid-up policy above provided will be entitled to a cash surrender value of the entire reserve existing thereon at the time of surrender according to said table of mortality and rate of interest, and the paid-up policy will be entitled to a loan equal to its cash value upon the conditions herein prescribed for a loan under this policy.

Cash surrender value

In lieu of the extended term insurance, and the pure endowment if any, or paid-up policy above provided the Company will, under the conditions applicable to the issue of said paid-up policy, pay said value in cash.

After two full years' premiums have been paid hereon, if any subsequent premium becomes due and is unpaid, the extended insurance shall not automatically apply, anything herein to the contrary notwithstanding, but the legal holder of this policy shall be entitled at any time unconditionally to the cash surrender value described herein, provided that if this policy has not been surrendered for its cash surrender value, the Company will, if so requested by the legal holder of this policy within three months after the time the first unpaid premium becomes due, apply said cash surrender value to purchase either the extended insurance or the paid-up policy described herein.

TABLE A

THIS TABLE SHOWS THE NON-FORFEITING VALUES ABOVE DESCRIBED AT THE END OF COMPLETED POLICY YEARS, FOR ONE THOUSAND DOLLARS OF THE SUM INSURED, WHEN THERE IS NO INDEBTEDNESS TO THE COMPANY SECURED BY THIS POLICY AND NO EXISTING DIVIDEND ADDITIONS. THE PAID-UP POLICY, THE CASH VALUE, AND THE PURE ENDOWMENT IF ANY, FOR INSURANCE OF A GREATER OR LESS AMOUNT THAN ONE THOUSAND DOLLARS WILL BE PROPORTIONATE. EACH FULL QUARTER OF A YEAR THAT HAS ELAPSED AFTER THE END OF ANY POLICY YEAR AND FOR WHICH QUARTER YEAR THE PREMIUM DUE HAS BEEN PAID WILL INCREASE THE CASH VALUE AND THE PAID-UP POLICY ONE-FOURTH OF THE INCREASE FOR THE FULL YEAR. THE TERM OF THE EXTENDED INSURANCE WILL BE RECKONED FROM THE TIME WHEN THE FIRST UNPAID PREMIUM BECOMES DUE AND WILL NOT VARY WITH THE AMOUNT OF THE INSURANCE.

NO DEDUCTION FROM THESE VALUES WILL BE MADE FOR A SURRENDER CHARGE.

Age 46

AT END OF YEAR	EXTENDED TERM INSURANCE			PAID-UP POLICY	CASH OR LOAN VALUE	AT END OF YEAR	EXTENDED TERM INSURANCE			PAID-UP POLICY	CASH OR LOAN VALUE
	Years	Days	Pure End't				Years	Days	Pure End't		
2	1	277	-	$ 40	$ 21	13	11	9	-	$442	$291
3	3	161	-	81	44	14	11	70	-	472	317
4	4	340	-	120	67	15	11	112	-	503	343
5	6	78	-	160	91	16	11	117	-	529	367
6	7	109	-	198	116	17	11	109	-	554	391
7	8	74	-	236	140	18	11	91	-	579	415
8	8	349	-	273	165	19	11	64	-	602	439
9	9	210	-	309	190	20	11	31	-	625	463
10	10	29	-	345	214	40	10	133	-	726	578
10	10	175	-	378	240	50	9	2	-	812	690
10	10	291	-	410	367						

[illegible] policy [illegible] shown in this table will be computed upon the [illegible] given.

This policy will [illegible] be payable in full as an Endowment at the end of the policy year falling nearest to age 85 of the insured if then living.

The entire loan value for the end of any policy year will be available during the same year if the premium for that year has been paid.

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Effect of dividend additions and indebtedness on non-forfeiting values shown by Table A

The cash value of dividend additions, if any, will be paid in addition to the cash value shown by Table A. The cash value shown by Table A will be decreased by the amount of any indebtedness. The paid-up policy shown by Table A will be increased by the amount of the dividend additions, if any, and decreased in the same proportion that any indebtedness bears to the cash value hereof.

The cash value of dividend additions, if any, will be the same proportion of such additions that the cash value shown in Table A at that time bears to the corresponding paid-up policy.

18 Reinstatement

Within five years after default in any premium payment, if this policy has not been surrendered, it may be reinstated upon evidence of insurability satisfactory to the Company and by payment of arrears of premiums with interest at the rate of six per cent. per annum, and by payment or reinstatement of whatever indebtedness to the Company existed hereon at the date of default with interest from that date.

19 Modes of paying the insurance

If the policy is not assigned by the life beneficiary the life beneficiary may elect, or the payee after the death of the insured without such election may elect, by written notice filed at the Home Office of the Company, before any payment on the sum insured has been made, to have the net sum payable by the Company under this policy either as a death claim, matured endowment or as a cash surrender value, paid by one of the following modes in lieu of payment in one sum, provided that the one sum to which every such payee would otherwise be entitled amounts to Five Hundred Dollars or more. Any mode of payment involving life instalments shall apply only to personal payees, the right of any payee contingent upon the death of a previous payee after the death of the insured shall be only such of the instalments certain as remain unpaid at the death of the last previous payee, and any election shall take effect only upon an endorsement of the same hereon by the Company. The first instalment by either of these modes will be paid when the one sum becomes payable as hereinbefore provided.

Under the third mode the attained age of any payee will be reckoned, under a death claim, as that of the last birthday of such payee preceding the death of the insured; or in case of a matured endowment or cash surrender value, as that of the last birthday preceding the time when the sum insured or the value first became payable by the Company, and satisfactory evidence of the date of birth of the payee or payees must be furnished before the instalment payments commence.

20 Sum may remain with Company at interest

FIRST. The payment annually in advance of three per cent. interest on the net sum payable, and the payment of the said sum at the death of the payee, less the unearned part of said interest, if any; and unless otherwise elected the payee may at the end of any interest year require the payment of the principal sum or any portion thereof.

21 Instalments for limited period

SECOND. The payment of equal annual, semi-annual, quarterly or monthly instalments for a limited number of years. The amount of instalment for each one thousand dollars in the net sum payable is shown in Table B. Instalments for a greater or less amount than one thousand dollars will be proportionate.

TABLE B

TERM OF INSTALMENT PAYMENTS	AMOUNT OF INSTALMENT				TERM OF INSTALMENT PAYMENTS	AMOUNT OF INSTALMENT			
	ANNUAL	SEMI-ANNUAL	QUARTERLY	MONTHLY		ANNUAL	SEMI-ANNUAL	QUARTERLY	MONTHLY
YEARS					YEARS				
5	$213.90	$107.93	$54.23	$18.15	25	$58.65	$29.66	$14.89	$4.99
10	116.14	58.69	29.45	9.86	30	52.57	26.58	13.35	4.47
15	83.85	42.37	21.29	7.12	35	48.34	24.46	12.29	4.11
20	68.03	34.36	17.27	5.78	40	45.21	22.91	11.51	3.85

22 Instalments for fixed period and for life

THIRD. The payment of equal annual, semi-annual, quarterly or monthly instalments for a fixed period of years as shown in Table C and as long thereafter as the payee shall live. The amount of annual instalment for each one thousand dollars in the net sum payable is shown in Table C opposite the attained age of the payee. Annual instalments for a greater or less amount than one thousand dollars will be proportionate.

TABLE C

AGE ATTAINED BY PAYEE	ANNUAL INSTALMENT FOR 5 YEARS	ANNUAL INSTALMENT FOR 10 YEARS	ANNUAL INSTALMENT FOR 15 YEARS	ANNUAL INSTALMENT FOR 20 YEARS	AGE ATTAINED BY PAYEE	ANNUAL INSTALMENT FOR 5 YEARS	ANNUAL INSTALMENT FOR 10 YEARS	ANNUAL INSTALMENT FOR 15 YEARS	ANNUAL INSTALMENT FOR 20 YEARS
0	$39.91	$39.72	$39.50	$39.27	43	$54.79	$54.17	$53.18	$51.88
1	39.92	39.75	39.55	39.34	44	55.63	54.96	53.89	52.47
2	39.93	39.79	39.61	39.42	45	56.52	55.79	54.62	53.07
3	39.95	39.84	39.68	39.51	46	57.45	56.65	55.38	53.69
4	40.05	39.94	39.78	39.63	47	58.43	57.56	56.17	54.33
5	40.19	40.08	39.92	39.78	48	59.47	58.51	56.98	54.98
6	40.34	40.24	40.08	39.93	49	60.57	59.51	57.83	55.64
7	40.52	40.41	40.25	40.11	50	61.72	60.56	58.71	56.31
8	40.70	40.60	40.44	40.28	51	62.94	61.66	59.62	56.99
9	40.90	40.80	40.65	40.47	52	64.22	62.80	60.55	57.67
10	41.37	41.20	40.96	40.67	53	65.58	64.00	61.51	58.36
11	41.55	41.38	41.13	40.84	54	67.02	65.26	62.50	59.04
12	41.74	41.56	41.31	41.01	55	68.54	66.57	63.51	59.72
13	41.93	41.75	41.50	41.19	56	70.14	67.94	64.54	60.40
14	42.13	41.95	41.70	41.38	57	71.83	69.36	65.59	61.06
15	42.34	42.16	41.90	41.58	58	73.62	70.85	66.66	61.71
16	42.56	42.38	42.11	41.78	59	75.52	72.40	67.74	62.35
17	42.80	42.61	42.33	41.99	60	77.52	74.00	68.83	62.95
18	43.04	42.84	42.56	42.22	61	79.64	75.66	69.92	63.54
19	43.29	43.09	42.80	42.45	62	81.88	77.38	71.00	64.09
20	43.55	43.35	43.05	42.69	63	84.24	79.15	72.08	64.61
21	43.83	43.62	43.31	42.94	64	86.74	80.97	73.14	65.09
22	44.12	43.90	43.59	43.20	65	89.38	82.84	74.18	65.53
23	44.42	44.20	43.88	43.47	66	92.16	84.75	75.19	65.93
24	44.74	44.51	44.18	43.76	67	95.10	86.69	76.16	66.29
25	45.07	44.84	44.49	44.05	68	98.20	88.65	77.09	66.61
26	45.42	45.18	44.82	44.36	69	101.46	90.64	77.97	66.89
27	45.78	45.53	45.17	44.68	70	104.89	92.62	78.79	67.12
28	46.17	45.90	45.53	45.02	71	108.49	94.60	79.55	67.32
29	46.57	46.29	45.90	45.37	72	112.26	96.55	80.24	67.48
30	46.98	46.70	46.28	45.73	73	116.20	98.47	80.86	67.61
31	47.42	47.13	46.68	46.10	74	120.32	100.34	81.42	67.72
32	47.89	47.58	47.10	46.49	75	124.60	102.15	81.90	67.80
33	48.37	48.05	47.54	46.90	76	129.03	103.87	82.32	67.86
34	48.88	48.54	48.01	47.32	77	133.62	105.50	82.68	67.90
35	49.41	49.05	48.49	47.76	78	138.33	107.02	82.97	67.93
36	49.98	49.59	48.99	48.22	79	143.16	108.42	83.21	67.95
37	50.56	50.16	49.52	48.69	80	148.08	109.70	83.39	68.03
38	51.18	50.75	50.07	49.18	81	153.05	110.35	83.54	Ages 81 and over same as age 80
39	51.83	51.37	50.64	49.68	82	158.05	111.86	83.65	
40	52.52	52.02	51.24	50.20	83	163.04	112.74	83.73	
41	53.24	52.71	51.86	50.74	84	167.97	113.49	83.79	
42	53.99	53.42	52.51	51.30	85 and over	172.81	114.12	83.85	

Note: To determine the semi-annual, quarterly or monthly instalments under the Third Mode multiply the annual instalment by decimal:
.508 for semi-annual instalments.
.255 for quarterly instalments.
.085 for monthly instalments.

28 Interest dividends

Under the first and second modes of paying the insurance, and under that part of the third mode providing for payments within the fixed period of years elected, the Company will pay annually in cash such interest dividends as may thereafter be declared.

24 How payable after death of payee

Unless otherwise provided, any sum payable by the Company after the death of a payee under either mode shall be payable to the executors, administrators or assigns of the payee.

25 Supplementary contract

When this policy becomes a claim, if an election has been made requiring payment by instalments, the policy shall, if required by the Company, be surrendered and a supplementary contract issued for the mode of payment elected.

26 Commutation of instalments

Unless otherwise elected the payee or payees under the second and third modes, may at any time surrender the contract for the commuted value of the instalment payments yet to be made, computed upon the same basis as the computations in the second mode, provided that no such commutation will be made under the third mode except after the death of the payee or payees occurring within the fixed period of years elected.

27 Assignments

No assignment of this policy shall be binding upon the Company until the original or a duplicate thereof is filed at its Home Office. The Company does not assume any responsibility for the validity of an assignment.

28 All agreements must be signed by an executive officer

All agreements made by the Company are signed by its President, Vice-President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer. No other person can alter or waive any of the conditions of this policy or make any agreement which shall be binding upon the Company.

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If the death of the insured occurs before the first anniversary of the date of this policy which follows the age of seventy years, ~~and before a payment under the permanent total disability provision, if any, has become due or before the ninety days allowed~~, all premiums previously due having been paid, and such death results directly and independently of all other causes from bodily injuries effected solely through external, violent and accidental means within ninety days from the occurrence of such accident, and if such accident is evidenced by a visible contusion or wound on the exterior of the body (except in case of drowning and internal injuries revealed by an autopsy), and if such death does not result from suicide, while sane or insane, nor from military or naval service in time of war, nor from an aeronautic flight or submarine descent nor directly or indirectly from disease in any form, then the Company will pay a sum equal to the sum described in this policy as the sum insured in addition thereto.

Each premium required for this policy includes Six and 25/100ths Dollars for the Double Indemnity provision above described, but in no event will the Double Indemnity part of said premium be required after such provision terminates.

The above provision for Double Indemnity may be annulled upon written request of the life beneficiary, and assignee if any, and the return of this policy for proper endorsement.

This provision is a part of Policy No. 537284 issued by the ÆTNA LIFE INSURANCE COMPANY on the life of

Edwin P. Haworth

Hartford, Conn., this 9th day of November, 19 21

ÆTNA LIFE INSURANCE COMPANY

James B. Sumner
Secretary.

Registrar

DOUBLE INDEMNITY FOR FATAL ACCIDENT AS HEREIN DESCRIBED.

Form No. 1321-A

41

If the insured becomes wholly, continuously and permanently disabled and will for life be unable to perform any work or conduct any business for compensation or profit, or has met with the irrecoverable loss of the entire sight of both eyes, or the total and permanent loss by removal or disease of the use of both hands or of both feet, or of such loss of one hand and one foot, and satisfactory evidence of such disability is received at the Home Office of the Company before the sum insured or any instalment thereof becomes payable, the Company will, upon the acceptance of such proof, if all premiums previously due have been paid, waive the payment of all premiums falling due thereafter during such disability; and if such disability existed before the insured attained the age of sixty years, the Company will immediately pay to the life beneficiary the sum of ten dollars for each thousand dollars of the sum insured and will pay the same sum on the same day of every month thereafter during the lifetime and during such disability of the insured.

Any premium waived or monthly payment made by the Company on account of this provision will not be deducted from any settlement under this policy, and the sum insured and loan and cash surrender value will be for the same amount as if the premiums waived had been paid in cash.

The foregoing benefits for disability are conditioned upon the representatives of the Company being permitted to examine the insured before the acceptance of proof and during twelve months thereafter.

If the insured recovers from the permanent total disability above described, the benefits herein provided will immediately cease and the policy will continue as if no disability had been incurred if the premiums falling due after such recovery are paid when due.

The consideration for this provision is an additional premium of Thirteen and 55/100ths Dollars, which consideration is included in the premium named in this policy, but will be reduced to [illegible] and 05/100ths Dollars after the insured attains the age of sixty years.

(NOTE—If on surrender of this policy at the end of the endowment term after disability payments commence, the Company will issue a supplementary contract providing for the continuance of the required disability payments during the lifetime and during the disability of the insured.)

The above provision for permanent total disability may be annulled upon written request of the life beneficiary, and assignee if any, and the return of this policy for proper endorsement, and the premium thereafter required for this policy will be reduced by the consideration charged for such provision.

This provision is a part of Policy No. 537284 issued by the ETNA LIFE INSURANCE COMPANY on the life of

Edwin L. Haworth

Dated at Conn., this 9th day of November 19 21

ETNA LIFE INSURANCE COMPANY,

James B. Skinner
Secretary.

Registrar.

PERMANENT TOTAL DISABILITY PROVISION—WAIVER OF PREMIUMS--MONTHLY INCOME FOR LIFE IF DISABILITY OCCURS BEFORE AGE SIXTY--FULL INSURANCE PAYABLE AT DEATH OR MATURITY.

Form No. 1582
ENDT. P. OR N.P.
2-'21

THIS COPY OF THE APPLICATION

should be carefully examined and if any error or omission is found the policy should be returned immediately to the Home Office of the Company for correction.

30206-531284

Page 1.

Form No. 2. Application Ed. March, 1906

EXECUTIVE OFFICERS

PRESIDENT
VICE-PRESIDENT
SECRETARY
ASST. SECRETARY
TREASURER
ASST. TREASURER

I hereby apply to the ÆTNA LIFE INSURANCE COMPANY for a contract of insurance upon my life, and I do hereby declare that I am in sound health and have no disease or ailment not fully set forth herein; that the statements and answers herein made and signed by me are complete and true, and I agree that they shall form a part of the contract or policy issued by said Company upon my life. I further agree that no statement or declaration made to any agent, examiner, or any other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of said Company, or as charging it with any liability by reason thereof. I also acknowledge that all policies and agreements made by said Ætna Life Insurance Company are signed by one or more of its executive officers, and that no agent or other person not an executive officer can grant insurance, or waive any condition of its policies, or make any agreement which shall be binding upon said Company.

USE GOOD BLACK INK ONLY

1 a. What is your name? (*Write Plainly Christian name in full.*) Edwin P. Haworth

b. Are you married? Yes c. Age next Birthday? 49 Years.

d. Place of birth? St. Joseph, Mo. (*City or Town*) (*State-Country*)

e. Date of your birth? Month May Day 10 Year 1858

2 a. Residence? 6047 Summit K.C. Mo. (*If in country state Section and Miles to nearest Village or Post Office—giving name*) (*City or Town*) (*Street and No. or R. F. D. No.*) Jackson (*County*) Mo (*State*)

b. Have you lived there for three years? 5 If not, where?

c. What is your business address? (*If other than residence.*) 3005 Main St. K.C. Mo. 2927 Main St

3 a. What is your present occupation? (*If more than one, state all; if a clerk, salesman, merchant, manufacturer, mechanic or laborer, state class of goods sold, manufactured or handled.*) Owner & Mgr. of Hospital

b. If employed, state name of employer and location of employment? Self 16 yrs.

c. In what occupations have you heretofore been engaged?

d. Have you ever taken an Aerial flight? No g. Do you contemplate such flight? No

e. Are you employed in the Army or Navy? No h. Do you contemplate such service? No

f. Are you now, or have you ever been connected with the manufacture or sale of malt or spirituous liquors? (*If so, when and how?*) No

4 a. Do you contemplate changing your occupation? (*If so, state particulars.*) No

b. Do you contemplate traveling to or residing in any foreign country? (*If so, state particulars.*) No

5 a. State kind of policy desired. (*Also whether Partic. or Non-Partic.*) Part Ord Life - Non Pt

b. Amount of Insurance $ 10,000 To be issued Including Rider & Dd

c. Premium $ 221.45 Annually

(*If a Participating Policy, the dividends unless otherwise requested shall reduce the premiums or be paid in cash.*)

6 What is the Name, Residence, and Relationship, or insurable interest, of the person to be benefited by this Policy in event of your death?

Cora M. Haworth Wife

It is desired that the Policy be written with respect to the Beneficiary as nearly in accordance with the above request as the experience of the Company will suggest as being most likely to meet the requirements, and the acceptance of the Policy so written will be regarded as an acknowledgment that the Company has complied with the wishes of the applicant.

7 Have you personally employed or consulted any Physician during the last five years? (*If so, give names and residences of all and state for what cause.*) Dr. Wm. Warner & K.C. Mo. Bowel trouble - Completely cured.

8 Has any proposal or application ever been made or submitted to any Company, Association, Agent or Physician, for which insurance on your life is now pending or has not been granted for the full amount, and of the same kind then applied for? (*If so, state particulars and the names of all such Companies, Associations, Agents or Physicians.*) No

9 a. What amount of insurance is now in force on your life, and in what Companies or Associations? 10,000 Ætna Pol. # 425329

b. Approximate dates of last insurance granted by each 1911

10 Has any Physician, Company, Association or Agent ever expressed an unfavorable opinion on your life with reference to life insurance or refused to reinstate insurance that has lapsed? (*If so, state particulars.*) No

(*Use this space, if necessary, in further explanation of the answers to any of the above questions.*)

Dated at K.C. Mo. Nov. 5 1911 Witness R. B. Warner Applicant's sign here Edwin P. Haworth

(*Under the Law of Missouri, Section [illegible] Revised Statutes, 1909, it is unlawful to write the signature of the applicant for insurance upon any application for insurance, or to procure the signature of the applicant thereto, by the use of any device whatsoever, or by making any mark other than the usual signature, UNLESS THE PERSON SO SIGNING SHALL AT THE TIME SIGN HIS NAME IN THE PRESENCE OF AT LEAST ONE WITNESS, who shall write his name as a witness to the signature.*)

Use Good BLACK INK ONLY

FAMILY RECORD.	LIVING. Age?	Health?	DEAD. Age?	Cause of Death?	Date of Death?
Father,			57	Accident	1880
Father's Father,			84	Don't know	
Father's Mother,			86	Don't know	
Mother,			34	Consumption	1883
Mother's Father,			76	Don't know	
Mother's Mother,			70	Don't know	

	LIVING. Age?	Health?	DEAD. Age?	Cause of Death?	Date of Death?
Brothers, 0					
Sisters 2			2	Croup	

12. Have you ever had any of the following diseases? (*Answer Yes or No opposite each. If yes, state the date, duration and severity of illness with full particulars.*)

Abscess,	No	Consumption,	No	Enlargement of Veins,	No	Gout,	No
Apoplexy,	No	Disease of the Heart,	No	Fits,	No	Gravel,	No
Appendicitis,	Yes	Disease of Liver,	No	Fistula,	No	Habitual Headache,	No
Asthma,	No	Dropsy,	No	Gall Stone,	No	Hip Joint Disease,	No
Bronchitis (Chronic),	No	Enlargement of Glands,	No	Goitre,	No	Jaundice,	No

Neuralgia,	No	Tumors,	No		
Paralysis,	No	Ulcers,	No		
Pellagra,	No	Vertigo,	No		
St. Vitus' Dance,	No				
Spitting of Blood,	No				

13 Have you had Inflammatory Rheumatism? (*If so, state severity and date of each attack.*) No

14 Are you subject to Dyspepsia, Dysentery, or Diarrhoea? No

15 Have you had any disease or severe sickness during the last seven years? (*If so, state the particulars of each case, and the name of the attending physician.*) Pneumonia - May 1878.

16 Have you either gained or lost weight during the last five years? (*If so, state particulars.*) No

17 Have you ever changed your residence on account of your health? (*If so, state particulars.*) No

18 Have you during the last five years lived in the same house with any one suffering from consumption? (*If so, state particulars.*) No

19 Which parent do you resemble in height, weight, and general characteristics? Mother

20 Have you been intemperate in the use of either malt or spirituous liquors during the past ten years? No

21 Do you use either malt or spirituous liquors daily or nearly every day? No

22 How often, and in what quantity do you use either of them?

23 Have you used any drug habitually or occasionally? No

24 Have you ever taken any cure or treatment for any habit? (*If so, state what and when?*) No

(*Additional Questions to be answered by the Applicant, if a Woman.*)

25 a. Are you married? b. How long married? c. Number of labors? d. Date of last labor?

26 a. Were labors normal? b. Have you miscarried and if so from what cause and at what date? c. Are you now pregnant?

27 a. Is your menstruation regular and normal? b. Have you ever been treated for any disease of womb or ovaries? c. Are there any tumors in the breasts or any other part of the body?

28 If a widow, state date and cause of husband's death

Husband died 1902. Not married. No children.

Dated at K.C. Mo. this 5 day of Nov. 1911 Edwin P. Haworth

IN PRESENCE OF R. B. Warner (*Examining Physician.*) Applicant must sign here (*Write the Christian name in full.*)

MEDICAL CERTIFICATE ON THE REVERSE OF THIS PAGE

43

44

No. 537284

ÆTNA LIFE
INSURANCE COMPANY
OF
HARTFORD, CONN.

ON THE LIFE OF

Edwin P. Haworth

SUM INSURED $ 5000.

Annual PREMIUM $ 221.45

AGE 46

DATE November 9, 1921

EXAMINED BY

PREMIUMS PAYABLE DURING 30 YEARS OR UNTIL PRIOR DEATH. INSURANCE PAYABLE AT DEATH OR AT END OF 30 YEARS. ANNUAL DIVIDENDS.

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1500

Ætna Life Insurance Company

EXHIBIT C"

Hartford, Connecticut

No. N 760251 Age 53

(herein called the Company)

HEREBY AGREES TO PAY

TEN THOUSAND DOLLARS

(herein called the sum insured)

immediately upon receipt at its Home Office of due proof of the death of

EDWIN T. HAWORTH

(herein called the insured)

to the beneficiary, Cora M. Haworth, wife of the insured.

This policy is issued and accepted subject to all the conditions, benefits and privileges described on the following pages, which are hereby made a part of this contract.

IN WITNESS WHEREOF the *ÆTNA LIFE INSURANCE COMPANY* has caused this policy to be executed at Hartford, Connecticut, this Ninth day of October 1928

H. B. Colton
Assistant Secretary.

Chas. E. Beaumont
President.

(herein called the Company)

HEREBY AGREES TO PAY

TEN THOUSAND DOLLARS

(herein called the sum insured)

immediately upon receipt at its Home Office of due proof of the death of

EDWIN T. HAWORTH

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to the beneficiary, Cora M. Haworth, wife of the insured.

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IN WITNESS WHEREOF the *ÆTNA LIFE INSURANCE COMPANY* has caused this policy to be executed at Hartford, Connecticut, this Ninth day of October 1928

H. H. Pelton
Assistant Secretary.

Arthur Brainard
President.

C. S. Lundberg
Registrar.

PREMIUMS PAYABLE DURING lifetime of insured.

INSURANCE PAYABLE AT DEATH. NON-PARTICIPATING.

N. P. L.

3500
9-'28

(reverse side)

Notice—This policy is pledged to the Ætna Life Insurance Company as security for a loan indebtedness. Particulars of same may be procured from the Home Office at Hartford, Conn.

C. J. Moody

1
Premiums and when payable

The Foregoing Agreement *is made in consideration of the* Annual *premium of* Four hundred thirty-one *Dollars and* Forty *Cents to be paid to the Company on or before the* Ninth *day of* October *in each and every year* during the lifetime of the insured.

2
Who may borrow on the policy, receive cash values and exercise other privileges

During the lifetime of the insured, the right to receive all cash values, loans and other benefits accruing hereunder, to exercise all options and privileges described herein and to agree with the Company to any change in or amendment to this policy shall vest alone in the insured *(herein called the life owner), subject, however, to any assignment by said life owner.*

3
How beneficiary may be changed

The beneficiary may be changed as often as desired, and such change shall take effect on receipt at the Home Office of the Company, before the sum insured or any instalment thereof becomes due, of a written request accompanied by the policy for endorsement. If any beneficiary dies before the insured, the interest of such beneficiary shall vest in the life owner alone unless otherwise provided herein.

4
How premiums are payable

All premiums shall be paid in advance at the Home Office of the Company, or to its authorized agent, in exchange for a receipt signed by its Secretary or Assistant Secretary and countersigned by the agent. If any such premium is not paid when due, this policy shall cease, subject to the values and privileges hereinafter described; except that a grace

Grace period

of thirty-one days, during which the policy shall remain in full force, will be allowed for the payment of any premium after the first. If death occurs within the grace period, the premium, if unpaid, will be deducted from the amount payable hereunder.

This policy shall not become effective until the first premium upon it is paid during the good health of the insured.

5
How premiums may be paid annually, semi-annually or quarterly

The Company will accept premiums for annual, semi-annual or quarterly periods at its published rates at the time this policy is issued, provided that before any change is made due written request shall be made to the Company before the end of the grace period.

3500

6 How loans are made on the policy

The Company will make loans on the sole security of this policy, if there has been no default in payment of premium.

The loan may be for any amount which, with interest, shall not exceed the cash value in Table A for the end of the current policy year, less any unpaid premiums for such policy year. There is no loan value prior to the policy years for which values are shown in Table A.

Interest shall be at the rate of six per cent. per annum payable at the end of each policy year.

A loan agreement satisfactory to the Company shall be executed and sent with the policy to the Company at its Home Office. The Company will return the policy after proper endorsement.

The whole or any part of the loan may be repaid at any time.

If interest is not paid when due it shall be added to the principal and bear interest at the same rate, provided the total indebtedness shall be within the limit secured by the cash surrender value of the policy. Otherwise, non-payment of interest will render the policy null and void thirty-one days after notice shall have been mailed by the Company to the last known addresses of the life owner, of the insured and of any assignee of record at the Home Office of the Company.

Any indebtedness to the Company on account of or secured by this policy shall be deducted from any settlement hereunder.

7 Non-forfeiting values

After three full years' premiums have been paid hereon and within three months after the due date of any unpaid premium, one of the following options may be elected by filing a written request with the Company at its Home Office accompanied by the policy.

Cash value

(a) To surrender the policy for the cash value set forth in Table A, less any indebtedness.

Paid-up insurance

(b) To have the policy continued as non-participating paid-up insurance, payable at the same time and under the same conditions as this policy, in the amount set forth in Table A; but any indebtedness on the policy will reduce the amount of paid-up insurance in such proportion as the indebtedness bears to the cash value at the due date of the premium defaulted.

Extended insurance

(c) To have the insurance continued as extended term insurance from the due date of the premium defaulted for the sum insured for the number of years and days set forth in Table A; except that if there is any indebtedness against the policy the extended term insurance shall be for the sum insured less the indebtedness and for such a period as the cash value less the indebtedness will purchase according to the American Experience Table of Mortality and three and one-half per cent. interest.

Automatic extended insurance on failure to pay a premium

On default in payment of premium, if no one of the above options has been elected, the insurance will be continued automatically as extended term insurance under option (c).

The values of these options are mathematical equivalents calculated on the basis of the American Experience Table of Mortality with interest at three and one-half per cent. per annum. The reserve for which funds are to be held upon this policy shall be computed on the basis of the same mortality table with the same rate of interest by the full net level premium method. The cash value is equal to the reserve for the sum insured less a surrender charge of not more than two and one-half per cent. of the sum insured. This surrender charge gradually decreases, and at the end of the fifteenth year and thereafter the cash value is the full reserve taken to the nearest dollar for each one thousand dollars of insurance.

Paid-up insurance or extended term insurance under this policy may be surrendered at any time for a cash value consisting of the reserve held therefor. Paid-up insurance will be entitled to a loan equal to its cash value upon the conditions herein prescribed for a loan upon this policy.

TABLE A

NON-FORFEITING VALUES FOR EACH $1,000 OF SUM INSURED.

THIS TABLE SHOWS THE NON-FORFEITING VALUES ABOVE DESCRIBED AT THE END OF CERTAIN POLICY YEARS. VALUES FOR INTERMEDIATE OR LATER PERIODS WILL BE COMPUTED UPON THE SAME BASIS AND QUOTED UPON REQUEST.

THE PAID-UP INSURANCE AND CASH VALUES FOR A SUM INSURED GREATER OR LESS THAN $1,000 WILL BE PROPORTIONATE. THE TERM OF THE EXTENDED TERM INSURANCE WILL BE RECKONED FROM THE DUE DATE OF THE UNPAID PREMIUM AND WILL BE THE SAME FOR ANY SUM INSURED.

INDEBTEDNESS WILL AFFECT THE VALUES AS ABOVE DESCRIBED

Life — **Issued at Age 53**

AT END OF YEAR	EXTENDED TERM INSURANCE Years	Days	PAID-UP POLICY	CASH OR LOAN VALUE	AT END OF YEAR	EXTENDED TERM INSURANCE Years	Days	PAID-UP POLICY	CASH OR LOAN VALUE
3	2	275	$93	$54	13	7	334	$475	$333
4	3	307	137	81	14	8	9	507	361
5	4	270	180	109	15	8	104	548	397
6	5	181	222	136	16	8	98	574	422
7	6	11	262	165	17	8	83	598	447
8	6	229	301	192	18	8	59	621	471
9	7	8	338	220	19	8	24	643	495
10	7	127	375	249	20	7	346	665	518
11	7	216	409	276	25	7	25	758	630
12	7	282	443	305	30	5	245	836	733

Values provided for in the policy and not shown in this table will be computed upon the same basis as those given.

The entire loan value for the end of any policy year will be available during the same year if the premium for that year has been paid.

8 Automatic premium loan

If due written request for the operation of this provision has been filed at the Home Office of the Company before default in payment of premium, thereafter until a written revocation of said request has been filed with the Company, the amount of any premium not paid before the end of the grace period will automatically be loaned by the Company in payment of such premium and charged as an indebtedness secured by this policy, subject to interest at the rate of six per cent. per annum as prescribed for loans, provided that the total indebtedness hereunder will then be within the loan value described in Section 6. If the loan value is insufficient to cover the whole premium, the Company will loan a pro rata premium for as long a period as the loan value will allow. At the end of such period, if the balance of the premium be not paid, this policy shall cease; subject, however, to thirty-one days' notice as provided in Section 6 hereof.

While this policy is continued in force, as above, the whole or any part of the indebtedness may be repaid and payment of premiums may be resumed at any time without furnishing evidence of the good health of the insured.

9. How policy may be reinstated

Within five years after default in any premium payment, if this policy has not been surrendered, it may be reinstated upon evidence of insurability satisfactory to the Company and by payment of arrears of premiums with interest at the rate of six per cent. per annum, and by payment or reinstatement of whatever indebtedness to the Company existed hereon at the date of default with interest from that date.

10 How insurance may be made payable in instalments if desired instead of in one sum

If it is so elected, the whole or any part of the net sum payable under this policy as a death claim or as a cash value will be paid under one of the modes described below instead of in one sum.

Election shall take effect on receipt at the Home Office of the Company, before the sum insured or any instalment thereof becomes due, of a written notice accompanied by the policy for endorsement.

In case no election has been made during the lifetime of the insured, the beneficiary may so elect after the death of the insured.

These modes of settlement are not applicable to a payee when the amount of each payment would be less than ten dollars.

If an election has been made requiring payment under one of these modes, the policy shall be surrendered, if required by the Company, when it becomes a claim, and a supplementary contract will then be issued for the mode elected.

Interest Payments

MODE 1. The payment of interest on the net sum payable, annually, semi-annually, quarterly or monthly at the end of each interest period. The amount of interest payment for each $1,000 of the net sum payable will be as follows:

Annual	$35.00	Quarterly	$8.64
Semi-annual	17.35	Monthly	2.87

At the death of the payee, the net sum payable with accrued interest will be paid to the executors or administrators of the payee, unless otherwise provided in the election.

3500

Instalments of fixed amount

MODE 2. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments of any fixed amount specified in the election until the net sum payable, with interest thereon at three and one-half per cent. per annum and such excess interest as may be declared annually by the Company, is exhausted. At the death of the payee, the balance of the fund will be paid in one sum to the executors or administrators of the payee unless otherwise provided in the election.

Instalments for fixed period

MODE 3. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments for a fixed period of years. The amount of instalment for each $1,000 of the net sum payable is shown in Table B.

TABLE B

TERM OF INSTALMENT PAYMENTS	AMOUNT OF INSTALMENT				TERM OF INSTALMENT PAYMENTS	AMOUNT OF INSTALMENT			
	ANNUAL	SEMI-ANNUAL	QUARTERLY	MONTHLY		ANNUAL	SEMI-ANNUAL	QUARTERLY	MONTHLY
YEARS					YEARS				
5	$213.90	$107.99	$54.23	$18.15	25	$58.65	$29.66	$14.89	$4.99
10	116.14	58.69	29.45	9.86	30	52.57	26.58	13.35	4.47
15	83.85	42.37	21.29	7.12	35	48.34	24.46	12.29	4.11
20	68.03	34.36	17.27	5.78	40	45.21	22.91	11.51	8.85

Instalments for fixed period and life thereafter

MODE 4. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments for a fixed period of years and for as long thereafter as the payee lives. The amount of instalment for each $1,000 of the net sum payable is shown in Table C. The attained age of the payee shall be taken as of the birthday next before the day on which the first instalment becomes due.

TABLE C

AGE ATTAINED BY PAYEE	ANNUAL INSTALMENT FOR 5 YEARS	ANNUAL INSTALMENT FOR 10 YEARS	ANNUAL INSTALMENT FOR 15 YEARS	ANNUAL INSTALMENT FOR 20 YEARS	AGE ATTAINED BY PAYEE	ANNUAL INSTALMENT FOR 5 YEARS	ANNUAL INSTALMENT FOR 10 YEARS	ANNUAL INSTALMENT FOR 15 YEARS	ANNUAL INSTALMENT FOR 20 YEARS
0	$39.91	$39.72	$39.50	$39.27	43	$54.79	$54.17	$53.18	$51.88
1	39.92	39.75	39.55	39.34	44	55.63	54.96	53.89	52.47
2	39.93	39.79	39.61	39.42	45	56.52	55.79	54.62	53.07
3	39.95	39.84	39.68	39.51	46	57.45	56.65	55.38	53.69
4	40.05	39.94	39.78	39.63	47	58.43	57.56	56.17	54.33
5	40.19	40.08	39.92	39.78	48	59.47	58.51	56.98	54.98
6	40.34	40.24	40.08	39.93	49	60.57	59.51	57.83	55.64
7	40.52	40.41	40.25	40.11	50	61.72	60.56	58.71	56.31
8	40.70	40.60	40.44	40.28	51	62.94	61.66	59.62	56.99
9	40.90	40.80	40.65	40.47	52	64.22	62.80	60.55	57.67
10	41.37	41.20	40.96	40.67	53	65.58	64.00	61.51	58.36
11	41.55	41.38	41.13	40.84	54	67.02	65.26	62.50	59.04
12	41.74	41.56	41.31	41.01	55	68.54	66.57	63.51	59.72
13	41.93	41.75	41.50	41.19	56	70.14	67.94	64.54	60.40
14	42.13	41.95	41.70	41.38	57	71.83	69.36	65.59	61.06
15	42.34	42.16	41.90	41.58	58	73.62	70.85	66.66	61.71
16	42.56	42.38	42.11	41.78	59	75.52	72.40	67.74	62.35
17	42.80	42.61	42.33	41.99	60	77.52	74.00	68.83	62.95
18	43.04	42.84	42.56	42.22	61	79.64	75.66	69.92	63.54
19	43.29	43.09	42.80	42.45	62	81.88	77.38	71.00	64.09
20	43.55	43.35	43.05	42.69	63	84.24	79.15	72.08	64.61
21	43.83	43.62	43.31	42.94	64	86.74	80.97	73.14	65.09
22	44.12	43.90	43.59	43.20	65	89.38	82.84	74.18	65.53
23	44.42	44.20	43.88	43.47	66	92.16	84.75	75.19	65.93
24	44.74	44.51	44.18	43.76	67	95.10	86.69	76.16	66.29
25	45.07	44.84	44.49	44.05	68	98.20	88.65	77.09	66.61
26	45.42	45.18	44.82	44.36	69	101.46	90.64	77.97	66.89
27	45.78	45.53	45.17	44.68	70	104.89	92.62	78.79	67.12
28	46.17	45.90	45.53	45.02	71	108.49	94.60	79.55	67.32
29	46.57	46.29	45.90	45.37	72	112.26	96.55	80.24	67.48
30	46.98	46.70	46.28	45.73	73	116.20	98.47	80.86	67.61
31	47.42	47.13	46.68	46.10	74	120.32	100.34	81.42	67.72
32	47.89	47.58	47.10	46.49	75	124.60	102.15	81.90	67.80
33	48.37	48.05	47.54	46.90	76	129.03	103.87	82.32	67.86
34	48.88	48.54	48.01	47.32	77	133.62	105.50	82.68	67.90
35	49.41	49.05	48.49	47.76	78	138.33	107.02	82.97	67.93
36	49.98	49.59	48.99	48.22	79	143.16	108.42	83.21	67.95
37	50.56	50.16	49.52	48.69	80	148.08	109.70	83.39	68.03
38	51.18	50.75	50.07	49.18	81	153.05	110.85	83.54	Ages 81 and over same as age 80
39	51.83	51.37	50.64	49.68	82	158.05	111.88	83.65	
40	52.52	52.02	51.24	50.20	83	163.04	112.74	83.73	
41	53.24	52.71	51.86	50.74	84	167.97	113.49	83.79	
42	53.99	53.42	52.51	51.30	85 and over	172.81	114.12	83.85	

Note: To determine the semi-annual, quarterly or monthly instalments under the Fourth Mode multiply the annual instalment by decimal:
.506 for semi-annual instalments.
.256 for quarterly instalments.
.085 for monthly instalments.

Excess interest

The supplemental contract shall provide that in addition to any payments by the Company for a fixed period of years or to any interest payments as herein provided, payments of such excess interest as may be declared annually by the Company will be made.

Commutation of future payments

Unless otherwise provided in the election, the present value of any unpaid instalments under Modes 3 or 4, commuted on the basis of three and one-half per cent. interest per annum, will be paid in one sum at the death of the payee to the executors or administrators of the payee.

If it is specifically provided in the election, the payee may at any time withdraw under Mode 1 a part or all of the net sum payable, under Mode 2 the balance of the fund, or under Mode 3 the present value of the unpaid instalments commuted on the basis of three and one-half per cent. interest per annum.

All sums payable by the Company under this policy shall be payable at its Home Office. The sum insured will be payable under the terms hereof only upon receipt by the Company of this policy duly released.

11 Interest on death claim

Interest at the rate of three and one-half per cent. per annum, together with such excess interest as is then being declared in connection with the above modes of settlement, will be paid on the proceeds of this policy from the date of death of the insured to the date of settlement at the Home Office of the Company.

12 Statements in application are representations and not warranties

All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid the policy or be used in defense to a claim under it unless it is contained in the written application herefor and unless a copy of such application is attached hereto when issued.

13 Policy incontestable ~~after one year~~

This policy and the application herefor, a copy of which application is attached hereto and made a part hereof, constitute the entire contract between the parties hereto, and it shall be incontestable ~~after it has been in force during the lifetime of the insured for a period of one year~~ from its date of issue except for non-payment of premium.

Rule governing if age has been misstated

If the age of the insured has been misstated the amount payable hereunder shall be such an amount as the premium paid would have purchased at the Company's published rate now in use for the correct age. Age will be admitted on proof satisfactory to the Company.

~~14 Amount payable in event of suicide within one year~~

~~If the insured shall commit suicide within one year from the date hereof, while sane or insane, the Company will be liable only for an amount equal to the premiums paid in cash hereunder.~~

15 Policy non-participating

This policy shall not be entitled to share in the surplus earnings of the Company.

16 Assignments

No assignment of this policy shall be binding upon the Company unless and until the original or a duplicate thereof is filed at its Home Office. The Company does not assume any responsibility for the validity of an assignment.

17 All agreements must be signed by an executive officer

All agreements made by the Company are signed by its President, Vice-President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer. No other person can alter or waive any of the conditions of this policy, extend the time for paying a premium or make any agreement which shall be binding upon the Company.

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3500

DOUBLE INDEMNITY PROVISION

If the death of the insured occurs before default in payment of premium and before the first anniversary of the date of this policy which follows the age of seventy years, and such death results directly and independently of all other causes from bodily injuries effected solely through external, violent and accidental means within ninety days from the occurrence of such accident, and if such accident is evidenced by a visible contusion or wound on the exterior of the body (except in case of drowning and internal injuries revealed by an autopsy) and if such death does not result from suicide, while sane or insane, nor from military or naval service in time of war, nor from an aeronautic flight or submarine descent, nor directly or indirectly from disease in any form, then the Company will pay a sum equal to the sum described in this policy as the sum insured in addition thereto.

The consideration for this provision is an additional premium of Twelve Dollars and Fifty Cents, which consideration is included in the premium named in this policy, but such additional premium will not be required after this provision terminates.

The benefit herein described for death by accident will not be included in the paid-up insurance or extended term insurance granted on default in payment of premium.

This provision for double indemnity will be annulled upon written request of the life owner, and assignee if any, and the return of the policy for proper endorsement; thereafter the premium required for this policy will be reduced by the consideration charged for this provision.

This provision is attached to and a part of Policy No. N 760251 issued by the ÆTNA LIFE INSURANCE COMPANY on the life of

Edwin P. Haworth

Hartford, Conn., this 9th day of October, 1928

ÆTNA LIFE INSURANCE COMPANY,

C S Lundberg *Registrar.*

James B. Skinner *Secretary.*

DOUBLE INDEMNITY FOR FATAL ACCIDENT AS HEREIN DESCRIBED.

Form No. 3685
L. or S. Mat. after 70
1-'28

15

PERMANENT TOTAL DISABILITY PROVISION

If, before default in payment of premium and before attaining the age of sixty years, the insured becomes totally and permanently disabled by bodily injuries or disease and is thereby prevented from performing any work or conducting any business for compensation or profit, the following benefit will be available:

A waiver of the payment of premiums falling due during such disability.

If before attaining the age of sixty years the insured becomes totally disabled by bodily injuries or disease and is thereby prevented from performing any work or conducting any business for compensation or profit for a period of ninety consecutive days, then, if satisfactory evidence has not been previously furnished that such disability is permanent, such disability shall be presumed to be permanent. In such a case, the benefit shall accrue from the expiration of the said ninety days, but not from a date more than six months prior to the date that evidence of such disability satisfactory to the Company is received at its Home Office. No benefit shall accrue prior to the expiration of said ninety days unless during that period evidence satisfactory to the Company is received at its Home Office while the insured is living that the total disability will be permanent, in which event the benefit will accrue from the commencement of disability.

If the insured meets with the irrecoverable loss of the entire sight of both eyes, or the total and permanent loss of the use of both hands or of both feet, or of such loss of one hand and one foot, such loss shall be considered total and permanent disability within the meaning of this provision.

No benefit, however, will be allowed hereunder for disability resulting directly or indirectly on account of military or naval service by the insured in time of war.

The benefit under this provision is conditioned upon evidence of the continuance of total disability of the insured satisfactory to the Company being furnished when requested and upon the representatives of the Company being permitted to examine the insured at any time, but such evidence or examination shall not be required oftener than once a year after the expiration of two years from the acceptance of such evidence. If it shall appear to the Company that the insured is able to perform any work or conduct any business for compensation or profit after a claim has been allowed, then, except in case of the irrecoverable loss of the entire sight of both eyes, or the irrecoverable total and permanent loss of the use of both hands or of both feet, or of such loss of one hand and one foot, the disability benefit shall cease.

Premiums waived by the Company on account of this provision will not be deducted from any settlement under this policy, and the sum insured and loan and cash surrender values will be the same as if the premiums waived had been paid in cash.

The consideration for this provision is an additional premium of Fourteen Dollars and Seventy Cents, which consideration is included in the premium named in this policy, but such additional premium will not be required after the insured attains the age of sixty years.

This provision for permanent total disability will be annulled upon written request of the life owner, and assignee if any, and the return of the policy for proper endorsement; thereafter the premium required for this policy will be reduced by the consideration charged for this provision.

This provision is attached to and a part of Policy No. N 760251 issued by the ÆTNA LIFE INSURANCE COMPANY on the life of

Edwin P. Haworth

Hartford, Conn., this 9th day of October, 19 28

ÆTNA LIFE INSURANCE COMPANY.

C S Lindsley *Registrar*

James B. Skinner *Secretary.*

PERMANENT TOTAL DISABILITY PROVISION—WAIVER OF PREMIUMS IF DISABILITY OCCURS BEFORE AGE SIXTY FULL INSURANCE PAYABLE AT DEATH.

Form No. 8867
Dis. 4-L and E.
1-28

THIS COPY OF THE APPLICATION

should be carefully examined and if any error or omission is found the policy should be returned immediately to the Home Office of the Company for correction.

Form No. 673
Edition Nov. 1926
Life Dept. Policy Division
Chicago Section

N760251

APPLICATION FOR CONVERSION OF TERM POLICIES

September 20, 1928

I, Edwin P. Haworth of Kansas City Mo

County of Jackson State Prov. of Mo hereby apply to the ÆTNA LIFE INSURANCE COMPANY for changed insurance on my life, in accordance with the conditions of the term Policy No. 302206, issued by said Company, and I hereby certify that said policy is not now assigned except to no and agree that the statements and answers in the application for said term policy shall be the basis of the new contract or policy herein applied for and form a part of the same, except that the kind of policy, amount, premium and beneficiary shall be as specified below.

If entire term policy is not now to be converted, shall the balance be continued as term insurance? All converted

Kind of policy desired N P Ordinary Life (If a participating policy, the dividends unless otherwise requested shall reduce premiums or be paid in cash.)

Disability Provision (1-3 or 4) 4

Double Indemnity (Yes or No) No

Date of New Policy Oct 9th 1928 Amount $ 10 000 Premium $ 431.40 Annually

Beneficiary to be the same as now written in term policy "Wife" Cora M. Haworth "Wife"

I agree that the acceptance of the new policy by me is to be regarded as an acknowledgment that the same is satisfactory, and that all insurance under said term policy, or the portion thereof converted as herein requested, shall thereupon cease.

Witness A.H.S. Edwin P. Haworth

Note: If Double Indemnity provision or a form of Permanent Total Disability benefit not now included in the term policy is desired, Certificate A should be signed by the insured and certified to as required under Certificates B and C. Re-examination may be required if additional Disability coverage is requested, but must not be procured until authorized by the Company.

CERTIFICATE A. I further certify (unless otherwise stated below) that I have never had any mental disorder or disease of the heart, brain or nervous system, nor suffered impairment of the use of an eye, an arm, hand, leg or foot; that my eyesight or hearing is not impaired; that since making my last application for insurance in said Company there has been no material change in my mental or physical condition and I have not consulted or been prescribed for or treated by any physician or any practitioner; (*State here any exceptions to the above with names and residences of all physicians or other practitioners*)

that my occupation is ..... (explain fully) which I do not contemplate changing;

that I am not now nor have I been connected with any military or naval organization, except as follows: .....

that I do not contemplate any military or naval service or any aeronautic flight or submarine descent, except as follows: .....

that *I am now in good health* except as herein stated, that my habits are temperate and that I have not in contemplation any journey outside of the continental land limits of the United States of America and the Dominion of Canada, nor any hazardous undertaking except as herein stated; and upon the basis of the correctness of these statements I request that the new policy contain such provisions as applied for above, provided said Company approves the granting of same.

Witness .....

CERTIFICATE B. (*To be signed by the agent, if possible; if not, by some reliable person well known to the agent*)

I hereby certify that I am well acquainted with Edwin P. Haworth who now requests his term policy to be changed, and that I believe from my own knowledge that his statements within made and signed by him are true and full.

R D Hamm

CERTIFICATE C. (*To be signed by the agent when Certificate B is signed by some person other than the agent*)

I hereby certify that I am well acquainted with the person who signed Certificate B and consider him thoroughly trustworthy.

.....

53

THIS COPY OF THE APPLICATION

should be carefully examined and if any error or omission is found the policy should be returned immediately to the Home Office of the Company for correction.

20,206 [illegible]

Page 1

Form No. 1. APPLICATION
Ed. March, 1919

EXECUTIVE OFFICERS

PRESIDENT
VICE-PRESIDENT
SECRETARY
ASST. SECRETARY
TREASURER
ASST. TREASURER

I hereby apply to the ÆTNA LIFE INSURANCE COMPANY for a contract of insurance upon my life, and I do hereby declare that I am in sound health and have no disease or ailment not fully stated herein, that the statements herein made and signed by me are complete and true, and I agree that they shall form part of the contract between me and the Company issued by said Company upon my life. I further agree that no statement or declaration made to any agent, examiner, or any other person, and not contained in this application, shall be taken or considered as having been made to or brought to the notice of said Company, or as changing it with any liability by reason thereof. I also acknowledge that all policies and agreements made by said Ætna Life Insurance Company are signed by one or more of its executive officers, and that no agent or other person not an executive officer can grant insurance, or waive any condition of its policies, or make any agreement which shall be binding upon said Company.

USE GOOD BLACK INK ONLY

1 a. What is your name? (*Write Plainly. Christian name in full.*) Edwin P. Haworth

b. Are you married? yes c. Age next Birthday? 47 Years

d. Place of birth? St. Joseph, Ill (City or Town) (State or Country)

e. Date of your birth? Month May Day 10 Year 1875

2 a. Residence? 3005 Main St. K.C. Mo (If in country state direction and miles to nearest Village or City Post-giving name.) (City or Town) (Street and No. or R.F.D. No.)

b. Have you lived there for three years? 5 If not, where? Fairfax (County) Mo (State)

c. What is your business address? (*If other than residence.*) 3005 Main St. K.C. Mo. 2924 Main St

3 a. What is your present occupation? (*If more than one, state all. If a clerk, salesman, merchant, manufacturer, mechanic, or laborer, state class of goods sold, manufactured or handled.*) Owner & Mgr. Eye Hospital

b. If employed, state name of employer and location of employment? Self

c. In what occupations have you heretofore been engaged? Yes Same for 16 yrs.

d. Have you ever taken an Aerial flight? No g. Do you contemplate such flight? No

e. Are you employed in the Army or Navy? No h. Do you contemplate such service? No

f. Are you now, or have you ever been connected with the manufacture or sale of malt or spirituous liquors? (*If so, when and how?*) No

4 a. Do you contemplate changing your occupation? (*If so, state particulars.*) No

b. Do you contemplate traveling to or residing in any foreign country? (*If so, state particulars.*) No

5 a. State kind of policy desired. (*Also whether Participating or Non-Participating.*) 20 Pmt Ord Life - Non Pt

b. Amount of Insurance $ 10,000 Term Insurance

c. Premium $ 77.45 Annually. Including Mon Dis & DE

(*If a Participating Policy, the dividends unless otherwise requested shall reduce the premiums or be paid in cash.*)

6. What is the Name, Residence, and Relationship, or insurable interest, of the person to be benefited by this Policy in event of your death?

Vera M. Haworth Wife

It is desired that the Policy be written with respect to the Beneficiary as nearly in accordance with the above request as the experience of the Company will suggest as being most likely to meet the requirements, and the acceptance of the Policy so written will be regarded as an acknowledgment that the Company has complied with the wishes of the applicant.

7 Have you personally employed or consulted any Physician during the last five years? (*If so, give names and residences of all and state for what cause.*) Dr. May K.C. Complete Exam. Dr. W.D. Vermoor K.C. Mo

8 Has any proposal or application ever been made or submitted to any Company, Association, Agent or Physician, for which insurance on your life is now pending or has not been granted for the full amount, and of the same kind then applied for? (*If so, state particulars and the names of all such Companies, Associations, Agents or Physicians.*) No

9 a. What amount of insurance is now in force on your life, and in what Companies or Associations? 10,000 Aetna Pol # 425329

b. Approximate dates of last insurance granted by each 1911

10. Has any Physician, Company, Association or Agent ever expressed an unfavorable opinion on your life with reference to life insurance or refused to reinstate insurance that has lapsed? (*If so, state particulars.*) No

(*If in this space is necessary, in further explanation of the answers to any of the foregoing questions.*)

Dated Nov. 8, 1921 Witness [illegible] Applicant sign here Edwin P. Haworth

(*The Answers to the following queries must be filled in by the EXAMINING PHYSICIAN, who must also sign them. The writer of the application should not fill in the following answers unless necessary, but PARTICULAR TO USE THE BLANK LINES AT THE FOOT OF THE PAGE, where the number of the question to which the explanation applies should be stated.*) Use Good BLACK INK ONLY

11 FAMILY RECORD.

	LIVING. Age?	Health?	DEAD. Age?	Cause of Death?	Date of Death?
Father,			97	Paralysis	1880
Father's Father,			65	Died Young	
Father's Mother,			86	Broken to go	
Mother,			34	Consumption	1883
Mother's Father,			86	Died Young	
Mother's Mother,			76	Died Young	

	LIVING. Age?	Health?	DEAD. Age?	Cause of Death?	Date of Death?
Brothers,	0				
Sisters,	2		25?	Consumption	
			2	Croup	

12 Have you ever had any of the following diseases? (*Answer Yes or No, opposite each. If yes, state the date, duration and severity of illness with full particulars.*)

Abscess,	No	Consumption,	No	Enlargement of Veins,	No	Gout,	No	Neuralgia,	No	Tumors,
Apoplexy,	No	Disease of the Heart,	No	Fits,	No	Gravel,	No	Paralysis,	No	Ulcers,
Appendicitis,	Yes	Disease of Liver,	No	Fistula,	No	Habitual Headache,	No	Pellagra,	No	Vertigo,
Asthma,	No	Dropsy,	No	Gall Stone,	No	Hip Joint Disease,	No	St. Vitus' Dance,	No	
Bronchitis (Chronic),	No	Enlargement of Glands,	No	Goitre,	No	Jaundice,	No	Spitting of Blood,	No	

13 Have you had Inflammatory Rheumatism? (*If so, state severity and date of each attack.*) No

14 Are you subject to Dyspepsia, Dysentery, or Diarrhœa? No

15 Have you had any disease or severe sickness during the last seven years? (*If so, state the particulars of each case, and the name of the attending physician.*) Pneumonia May 1921.

16 Have you either gained or lost weight during the last five years? (*If so, state particulars.*) No

17 Have you ever changed your residence on account of your health? (*If so, state particulars.*) No

18 Have you during the last five years lived in the same house with any one suffering from consumption? (*If so, state particulars.*) No

19 Which parent do you resemble in height, weight, and general characteristics? Mother

20 Have you been intemperate in the use of either malt or spirituous liquors during the past ten years? No

21 Do you use either malt or spirituous liquors daily or nearly every day? No

22 How often, and in what quantity do you use either of them?

23 Have you used any drug habitually or occasionally? No

24 Have you ever taken any cure or treatment for any habit? (*If so, state particulars.*) No

(*Additional Questions to be answered when Applicant is a Woman.*)

25 a. Are you married? b. How long married? c. Number of labors? d. Date of last labor?

26 a. Were labors normal? b. Have you miscarried and if so from what cause and at what date? c. Are you now pregnant?

27 a. Is your menstruation regular and normal? b. Have you ever been treated for any disease of womb or ovaries? c. Have there any tumors in the breasts or any other part of the body?

28. If a widow, state date and cause of husband's death

Appendicitis 1902. Not operated. No complications.
Pneumonia May 1921. Was confined to house for 3 weeks.

Dated at Kansas City, Mo. this 8 day of November 1921

IN PRESENCE OF [illegible] Examining Physician. Applicant must sign here Edwin P. Haworth (Write full Christian name in full)

MEDICAL CERTIFICATE ON THE REVERSE OF THIS PAGE

55

No. N 760251

Ætna Life Insurance Company

Hartford, Connecticut

ON THE LIFE OF

Edwin P. Haworth

SUM INSURED $ 10,000.

ANNUAL PREMIUM $ 431.40

AGE 53

DATE October 9, 1928

EXAMINED BY CSP

PREMIUMS PAYABLE DURING lifetime of insured.

INSURANCE PAYABLE AT DEATH. NON-PARTICIPATING.

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3500

Ætna Life Insurance Company

"EXHIBIT D"

Hartford, Connecticut

No. N 868571 (herein called the Company) Age 54

HEREBY AGREES TO PAY

TEN THOUSAND DOLLARS
(herein called the sum insured)

immediately upon receipt at its Home Office of due proof of the death of

EDWIN P. HAWORTH
(herein called the insured)

to the beneficiary, Cora M. Haworth, wife of the insured.

This policy is issued and accepted subject to all the conditions, benefits and privileges described on the following pages, which are hereby made a part of this contract.

IN WITNESS WHEREOF the *ÆTNA LIFE INSURANCE COMPANY* has caused this policy to be executed at Hartford, Connecticut, this Ninth day of September 1929

James B. Skinner
Secretary.

Thos. B. Bunnard
President.

Registrar.

MODIFIED LIFE POLICY WITH CHANGE OF RATE AT END OF FIVE (5) YEARS.
INSURANCE PAYABLE AT DEATH. NON-PARTICIPATING.

56

3537
4-29

N. P. MODIFIED LIFE

52

1
Premiums and when payable

The Foregoing Agreement is made in consideration of the Annual premium of Two hundred seventy-one Dollars and Sixty Cents to be paid to the Company on or before the Ninth day of September in each and every year for five years, and of the Annual premium of Five hundred twenty-six Dollars and Ninety Cents payable under the same conditions thereafter, during the lifetime of the insured.

2
Who may borrow on the policy, receive cash values and exercise other privileges

During the lifetime of the insured, the right to receive all cash values, loans and other benefits accruing hereunder, to exercise all options and privileges described herein and to agree with the Company to any change in or amendment to this policy shall vest alone in the insured (herein called the life owner), subject, however, to any assignment by said life owner.

3
How beneficiary may be changed

The beneficiary may be changed as often as desired, and such change shall take effect on receipt at the Home Office of the Company, before the sum insured or any instalment thereof becomes due, of a written request accompanied by the policy for endorsement. If any beneficiary dies before the insured, the interest of such beneficiary shall vest in the life owner alone unless otherwise provided herein.

4
How premiums are payable

All premiums shall be paid in advance at the Home Office of the Company, or to its authorized agent, in exchange for a receipt signed by its Secretary or Assistant Secretary and countersigned by the agent. If any such premium is not paid when due, this policy shall cease, subject to the values and privileges hereinafter described; except that a grace of

Grace period

thirty-one days, during which the policy shall remain in full force, will be allowed for the payment of any premium after the first. If death occurs within the grace period, the premium, if unpaid, will be deducted from the amount payable hereunder.

This policy shall not become effective until the first premium upon it is paid during the good health of the insured.

5
How premiums may be paid annually, semi-annually or quarterly

The Company will accept premiums for annual, semi-annual or quarterly periods at its published rates at the time this policy is issued, provided that before any change is made due written request shall be made to the Company before the end of the grace period.

6 How loans are made on the policy

The Company will make loans on the sole security of this policy, if there has been no default in payment of premium.

The loan may be for any amount which, with interest, shall not exceed the cash value in Table A for the end of the current policy year, less any unpaid premiums for such policy year. There is no loan value prior to the policy years for which values are shown in Table A.

Interest shall be at the rate of six per cent. per annum payable at the end of each policy year.

A loan agreement satisfactory to the Company shall be executed and sent with the policy to the Company at its Home Office. The Company will return the policy after proper endorsement.

The whole or any part of the loan may be repaid at any time.

If interest is not paid when due it shall be added to the principal and bear interest at the same rate, provided the total indebtedness shall be within the limit secured by the cash surrender value of the policy. Otherwise, non-payment of interest shall render the policy null and void thirty-one days after notice shall have been mailed by the Company to the last known addresses of the life owner, of the insured and of any assignee of record at the Home Office of the Company.

Any indebtedness to the Company on account of or secured by this policy shall be deducted from any settlement hereunder.

7 Non-forfeiting values

After the number of full years' premiums have been paid hereon for which values are shown in Table A and within three months after the due date of any unpaid premium, one of the following options may be elected by filing a written request with the Company at its Home Office accompanied by the policy.

Cash value

(a) To surrender the policy for the cash value set forth in Table A, less any indebtedness.

Paid-up insurance

(b) To have the policy continued as non-participating paid-up insurance, payable at the same time and under the same conditions as this policy, in the amount set forth in Table A; but any indebtedness on the policy will reduce the amount of paid-up insurance in such proportion as the indebtedness bears to the cash value at the due date of the premium defaulted.

Extended insurance

(c) To have the insurance continued as extended term insurance from the due date of the premium defaulted for the sum insured for the number of years and days set forth in Table A; except that if there is any indebtedness against the policy, the extended term insurance shall be for the sum insured less the indebtedness and for such a period as the cash value less the indebtedness will purchase according to the American Experience Table of Mortality and three and one-half per cent. interest.

Automatic extended insurance on failure to pay a premium

On default in payment of premium, if no one of the above options has been elected, the insurance will be continued automatically as extended term insurance under option (c).

The values of these options are mathematical equivalents calculated on the basis of the American Experience Table of Mortality with interest at three and one-half per cent. per annum. The reserve for which funds are to be held upon this policy shall be computed on the basis of the same mortality table with the same rate of interest for insurance payable at death with level premiums after the first five years, payable throughout the lifetime of the insured, and with premiums payable at half the same rate for the first five years. The cash value is equal to the reserve for the sum insured less a surrender charge of not more than two and one-half per cent. of the sum insured. At the end of the twentieth year and thereafter the cash value is the full reserve taken to the nearest dollar for each one thousand dollars of insurance.

Paid-up insurance or extended term insurance under this policy may be surrendered at any time for a cash value consisting of the reserve held therefor. Paid-up insurance will be entitled to a loan equal to its cash value upon the conditions herein prescribed for a loan upon this policy.

TABLE A

NON-FORFEITING VALUES FOR EACH $1,000 OF SUM INSURED.

THIS TABLE SHOWS THE NON-FORFEITING VALUES ABOVE DESCRIBED AT THE END OF CERTAIN POLICY YEARS. VALUES FOR INTERMEDIATE OR LATER PERIODS WILL BE COMPUTED UPON THE SAME BASIS AND QUOTED UPON REQUEST.

THE PAID-UP INSURANCE AND CASH VALUES FOR A SUM INSURED GREATER OR LESS THAN $1,000 WILL BE PROPORTIONATE. THE TERM OF THE EXTENDED TERM INSURANCE WILL BE RECKONED FROM THE DUE DATE OF THE UNPAID PREMIUM AND WILL BE THE SAME FOR ANY SUM INSURED.

INDEBTEDNESS WILL AFFECT THE VALUES AS ABOVE DESCRIBED.

N. P. L. ½P. 5 yrs. **Age 54**

AT END OF YEAR	EXTENDED TERM INSURANCE		PAID-UP INSURANCE	CASH OR LOAN VALUE	AT END OF YEAR	EXTENDED TERM INSURANCE		PAID-UP INSURANCE	CASH OR LOAN VALUE
	Years	Days				Years	Days		
3	..	350	$34	$20	13	5	282	$371	$265
4	1	66	43	26	14	5	351	406	294
5	1	114	51	32	15	6	40	439	323
6	1	354	81	51	16	6	79	470	351
7	2	326	128	82	17	6	105	500	379
8	3	240	173	113	18	6	118	529	407
9	4	104	216	144	19	6	121	556	433
10	4	290	257	174	20	6	214	602	475
11	5	73	297	205	25	6	9	715	601
12	5	191	335	235	30	4	322	809	717

The entire loan value for the end of any policy year will be available during the same year if the premium for that year has been paid.

8 Automatic premium loan

If due written request for the operation of this provision has been filed at the Home Office of the Company before default in payment of premium, thereafter until a written revocation of said request has been filed with the Company, the amount of any premium not paid before the end of the grace period will automatically be loaned by the Company in payment of such premium and charged as an indebtedness secured by this policy, subject to interest at the rate of six per cent. per annum as prescribed for loans, provided that the total indebtedness hereunder will then be within the loan value described in Section 6. If the loan value is insufficient to cover the whole premium, the Company will loan a pro rata premium for as long a period as the loan value will allow. At the end of such period, if the balance of the premium be not paid, this policy shall cease; subject, however, to thirty-one days' notice as provided in Section 6 hereof.

While this policy is continued in force, as above, the whole or any part of the indebtedness may be repaid and payment of premiums may be resumed at any time without furnishing evidence of the good health of the insured.

9 How policy may be reinstated

Within five years after default in any premium payment, if this policy has not been surrendered, it may be reinstated upon evidence of insurability satisfactory to the Company and by payment of arrears of premiums with interest at the rate of six per cent. per annum, and by payment or reinstatement of whatever indebtedness to the Company existed hereon at the date of default with interest from that date.

10 How insurance may be made payable in instalments if desired instead of in one sum

If it is so elected, the whole or any part of the net sum payable under this policy as a death claim, or as a cash value, will be paid under one of the modes described below instead of in one sum.

Election shall take effect on receipt at the Home Office of the Company, before the sum insured or any instalment thereof becomes due, of a written notice accompanied by the policy for endorsement.

In case no election has been made during the lifetime of the insured, the beneficiary may so elect after the death of the insured.

These modes of settlement are not applicable to a payee when the amount of each payment would be less than ten dollars.

If an election has been made requiring payment under one of these modes, the policy shall be surrendered, if required by the Company, when it becomes a claim, and a supplementary contract will then be issued for the mode elected.

Interest payments

MODE 1. The payment of interest on the net sum payable annually, semi-annually, quarterly or monthly at the end of each interest period. The amount of interest payment for each $1,000 of the net sum payable will be as follows:

Annual	$35.00	Quarterly	$8.64
Semi-annual	17.35	Monthly	2.87

At the death of the payee, the net sum payable with accrued interest will be paid to the executors or administrators of the payee, unless otherwise provided in the election.

Instalments of fixed amount

MODE 2. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments of any fixed amount specified in the election until the net sum payable, with interest thereon at three and one-half per cent. per annum and such excess interest as may be declared annually by the Company, is exhausted. At the death of the payee, the balance of the fund will be paid in one sum to the executors or administrators of the payee, unless otherwise provided in the election.

Instalments for fixed period

MODE 3. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments for a fixed period of years. The amount of instalment for each $1,000 of the net sum payable is shown in Table B.

TABLE B

TERM OF INSTALMENT PAYMENTS	AMOUNT OF INSTALMENT				TERM OF INSTALMENT PAYMENTS	AMOUNT OF INSTALMENT			
	ANNUAL	SEMI-ANNUAL	QUARTERLY	MONTHLY		ANNUAL	SEMI-ANNUAL	QUARTERLY	MONTHLY
YEARS					YEARS				
5	$213.90	$107.99	$54.23	$18.15	25	$58.65	$29.66	$14.89	$4.99
10	116.14	58.69	29.45	9.86	30	52.57	26.58	13.35	4.47
15	83.85	42.37	21.29	7.12	35	48.34	24.46	12.29	4.11
20	68.03	34.36	17.27	5.78	40	45.21	22.91	11.51	3.85

Instalments for fixed period and life thereafter

MODE 4. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments for a fixed period of years and for as long thereafter as the payee lives. The amount of instalment for each $1,000 of the net sum payable is shown in Table C. The attained age of the payee shall be taken as of the birthday next before the day on which the first instalment becomes due.

TABLE C

AGE ATTAINED BY PAYEE	ANNUAL INSTALMENT FOR 5 YEARS	ANNUAL INSTALMENT FOR 10 YEARS	ANNUAL INSTALMENT FOR 15 YEARS	ANNUAL INSTALMENT FOR 20 YEARS	AGE ATTAINED BY PAYEE	ANNUAL INSTALMENT FOR 5 YEARS	ANNUAL INSTALMENT FOR 10 YEARS	ANNUAL INSTALMENT FOR 15 YEARS	ANNUAL INSTALMENT FOR 20 YEARS
0	$39.91	$39.72	$39.50	$39.27	43	$54.79	$54.17	$53.18	$51.88
1	39.92	39.75	39.55	39.34	44	55.63	54.96	53.89	52.47
2	39.93	39.79	39.61	39.42	45	56.52	55.79	54.62	53.07
3	39.95	39.84	39.68	39.51	46	57.45	56.65	55.38	53.69
4	40.05	39.94	39.78	39.63	47	58.43	57.56	56.17	54.33
5	40.19	40.08	39.92	39.78	48	59.47	58.51	56.98	54.98
6	40.34	40.24	40.08	39.93	49	60.57	59.51	57.83	55.64
7	40.52	40.41	40.25	40.11	50	61.72	60.56	58.71	56.31
8	40.70	40.60	40.44	40.28	51	62.94	61.66	59.62	56.99
9	40.90	40.80	40.65	40.47	52	64.22	62.80	60.55	57.67
10	41.37	41.20	40.96	40.67	53	65.58	64.00	61.51	58.36
11	41.55	41.38	41.13	40.84	54	67.02	65.26	62.50	59.04
12	41.74	41.56	41.31	41.01	55	68.54	66.57	63.51	59.72
13	41.93	41.75	41.50	41.19	56	70.14	67.94	64.54	60.40
14	42.13	41.95	41.70	41.38	57	71.83	69.36	65.59	61.06
15	42.34	42.16	41.90	41.58	58	73.62	70.85	66.66	61.71
16	42.56	42.38	42.11	41.78	59	75.52	72.40	67.74	62.35
17	42.80	42.61	42.33	41.98	60	77.52	74.00	68.83	62.95
18	43.04	42.84	42.56	42.22	61	79.64	75.66	69.92	63.54
19	43.29	43.09	42.80	42.45	62	81.88	77.38	71.00	64.09
20	43.55	43.35	43.05	42.69	63	84.24	79.15	72.08	64.61
21	43.83	43.62	43.31	42.94	64	86.74	80.97	73.14	65.09
22	44.12	43.90	43.59	43.20	65	89.38	82.84	74.18	65.53
23	44.42	44.20	43.88	43.47	66	92.16	84.75	75.19	65.93
24	44.74	44.51	44.18	43.76	67	95.10	86.69	76.16	66.29
25	45.07	44.84	44.49	44.05	68	98.20	88.65	77.09	66.61
26	45.42	45.18	44.82	44.36	69	101.46	90.64	77.97	66.89
27	45.78	45.53	45.17	44.68	70	104.89	92.62	78.79	67.12
28	46.17	45.90	45.53	45.02	71	108.49	94.60	79.55	67.32
29	46.57	46.29	45.90	45.37	72	112.26	96.55	80.24	67.48
30	46.98	46.70	46.28	45.73	73	116.20	98.47	80.86	67.61
31	47.42	47.13	46.68	46.10	74	120.32	100.34	81.42	67.72
32	47.89	47.58	47.10	46.49	75	124.60	102.15	81.90	67.80
33	48.37	48.05	47.54	46.90	76	129.03	103.87	82.32	67.86
34	48.88	48.54	48.01	47.32	77	133.62	105.50	82.68	67.90
35	49.41	49.05	48.49	47.76	78	138.33	107.02	82.97	67.93
36	49.98	49.59	48.99	48.22	79	143.16	108.42	83.21	67.95
37	50.56	50.16	49.52	48.69	80	148.08	109.70	83.39	68.03
38	51.18	50.75	50.07	49.18	81	153.05	110.85	83.54	Ages 81 and over same as age 80
39	51.83	51.37	50.64	49.68	82	158.05	111.86	83.65	
40	52.52	52.02	51.24	50.20	83	163.04	112.74	83.73	
41	53.24	52.71	51.86	50.74	84	167.97	113.49	83.79	
42	53.99	53.42	52.51	51.30	85 and over	172.81	114.12	83.85	

Note: To determine the semi-annual, quarterly or monthly instalments under the Fourth Mode multiply the annual instalment by decimal:
.506 for semi-annual instalments.
.255 for quarterly instalments.
.085 for monthly instalments.

Excess Interest

In addition to any payments by the Company for a fixed period of years or to any interest payments under these modes of settlement, payments of such excess interest as may be declared annually by the Company will be made.

Commutation of future payments

Unless otherwise provided in the election, the present value of any unpaid instalments under Modes 3 or 4, commuted on the basis of three and one-half per cent. interest per annum, will be paid in one sum at the death of the payee to the executors or administrators of the payee.

If it is specifically provided in the election, the payee may at any time withdraw under Mode 1 a part or all of the net sum payable, under Mode 2 the balance of the fund, or under Mode 3 the present value of the unpaid instalments commuted on the basis of three and one-half per cent. interest per annum.

All sums payable by the Company under this policy shall be payable at its Home Office. The sum insured will be payable under the terms hereof only upon receipt by the Company of this policy duly released.

11 Statements in application are representations and not warranties

All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid the policy or be used in defence to a claim under it unless it is contained in the written application herefor and unless a copy of such application is attached hereto when issued.

12 Incontestability

This policy and the application herefor, a copy of which application is attached hereto and made a part hereof, constitute the entire contract between the parties hereto, and it shall be incontestable ~~after it has been in force during the lifetime of the insured for a period of two years~~ from its date of issue except for non-payment of premium.

Rule governing if age has been misstated

If the age of the insured has been misstated the amount payable hereunder shall be such an amount as the premium paid would have purchased at the Company's published rate now in use for the correct age. Age will be admitted on proof satisfactory to the Company.

~~13~~ Amount payable in event of suicide

~~If the insured shall commit suicide within two years from the date hereof, while sane or insane, the Company will be liable only for an amount equal to the premiums paid in cash hereunder.~~

14 Policy non-participating

This policy shall not be entitled to share in the surplus earnings of the Company.

15 Assignments

No assignment of this policy shall be binding upon the Company unless and until the original or a duplicate thereof is filed at its Home Office. The Company does not assume any responsibility for the validity of an assignment.

16 All agreements must be signed by an executive officer

All agreements made by the Company are signed by its President, Vice-President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer. No other person can alter or waive any of the conditions of this policy, extend the time for paying a premium or make any agreement which shall be binding upon the Company.

PERMANENT TOTAL DISABILITY PROVISION

If, before default in payment of premium and before attaining the age of sixty years, the insured becomes totally and permanently disabled by bodily injuries or disease and is thereby prevented from performing any work or conducting any business for compensation or profit, the following benefit will be available:

A waiver of the payment of premiums falling due during such disability.

If before attaining the age of sixty years the insured becomes totally disabled by bodily injuries or disease and is thereby prevented from performing any work or conducting any business for compensation or profit for a period of ninety consecutive days, then, if satisfactory evidence has not been previously furnished that such disability is permanent, such disability shall be presumed to be permanent. In such a case, the benefit shall accrue from the expiration of the said ninety days, but not from a date more than six months prior to the date that evidence of such disability satisfactory to the Company is received at its Home Office. No benefit shall accrue prior to the expiration of said ninety days unless during that period evidence satisfactory to the Company is received at its Home Office while the insured is living that the total disability will be permanent, in which event the benefit will accrue from the commencement of disability.

If the insured meets with the irrecoverable loss of the entire sight of both eyes, or the total and permanent loss of the use of both hands or of both feet, or of such loss of one hand and one foot, such loss shall be considered total and permanent disability within the meaning of this provision.

No benefit, however, will be allowed hereunder for disability resulting directly or indirectly on account of military or naval service by the insured in time of war.

The benefit under this provision is conditioned upon evidence of the continuance of total disability of the insured satisfactory to the Company being furnished when requested and upon the representatives of the Company being permitted to examine the insured at any time, but such evidence or examination shall not be required oftener than once a year after the expiration of two years from the acceptance of such evidence. If it shall appear to the Company that the insured is able to perform any work or conduct any business for compensation or profit after a claim has been allowed, then, except in case of the irrecoverable loss of the entire sight of both eyes, or the irrecoverable total and permanent loss of the use of both hands or of both feet, or of such loss of one hand and one foot, the disability benefit shall cease.

Premiums waived by the Company on account of this provision will not be deducted from any settlement under this policy, and the sum insured and loan and cash surrender values will be the same as if the premiums waived had been paid in cash.

The consideration for this provision is an additional premium of Sixteen Dollars and Thirty Cents, which consideration is included in the premium named in this policy, but such additional premium will not be required after the insured attains the age of sixty years.

This provision for permanent total disability will be annulled upon written request of the life owner, and assignee if any, and the return of the policy for proper endorsement; thereafter the premium required for this policy will be reduced by the consideration charged for this provision.

This provision is attached to and a part of Policy No. N 808571 issued by the ÆTNA LIFE INSURANCE COMPANY on the life of

Edwin P. Haworth

Hartford, Conn., this 9th day of September, 1920

ÆTNA LIFE INSURANCE COMPANY.

James B. Skinner
Secretary.

Registrar.

PERMANENT TOTAL DISABILITY PROVISION—WAIVER OF PREMIUMS IF DISABILITY OCCURS BEFORE AGE SIXTY—FULL INSURANCE PAYABLE AT DEATH.

Form No. 8867
Dis. 4 L. and E.
1-'20

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THIS COPY OF THE APPLICATION

should be carefully examined and if any error or omission is found the policy should be returned immediately to the Home Office of the Company for correction.

Form No. 673
Edition Nov. 1934
Life Dept. Policy Division
Change Section

N 406571 - 57

APPLICATION FOR CONVERSION OF TERM POLICIES

Aug 13 1921

I, Edwin P Haworth of Kansas City, Mo

County of Jackson State Prov. of Mo hereby apply to the ÆTNA LIFE INSURANCE COMPANY for changed insurance on my life, in accordance with the conditions of Term Policy No. 338885 81, issued by said Company, and I hereby certify that said policy is not now assigned except to NW and agree that the statements and answers in the application for said term policy shall be the basis of the new contract or policy herein applied for and form a part of the same, except that the kind of policy, amount, premium and beneficiary shall be as specified below.

If entire term policy is not now to be converted, shall the balance be continued as term insurance? All converted

Kind of policy desired N P (If a participating policy, the dividends unless otherwise requested shall reduce premiums or be paid in cash.) Disability Provision (1-3 or 4) 4 Double Indemnity (Yes or No) No

Date of New Policy Aug 9 1921 Amount $ 12,000 Premium $ 371.80 Annually

Beneficiary to be the same as now written in term policy Wife - Both parents if living

Haworth Virgil —

I agree that the acceptance of the new policy by me is to be regarded as an acknowledgment that the same is satisfactory, and that all insurance under said term policy, or the portion thereof converted as herein requested, shall thereupon cease.

Witness [illegible] X

Note: If Double Indemnity provision or a form of Permanent Total Disability benefit not now included in the term policy is desired, Certificate A should be signed by the insured and certified to as required under Certificates B and C. Re-examination may be required if additional Disability coverage is requested, but must not be procured until authorized by the Company.

CERTIFICATE A. I further certify (unless otherwise stated below) that I have never had any mental disorder or disease of the heart, brain or nervous system, nor suffered impairment of the use of an eye, an arm, hand, leg or foot; that my eyesight or hearing is not impaired; that since making my last application for insurance in said Company there has been no material change in my mental or physical condition and I have not consulted or been prescribed for or treated by any physician or any practitioner; (*State here any exceptions to the above with names and residences of all physicians or other practitioners*)

that my occupation is ..... (explain fully) ..... which I do not contemplate changing;

that I am not now nor have I been connected with any military or naval organization, except as follows: .....

that I do not contemplate any military or naval service or any aeronautic flight or submarine descent, except as follows:

that *I am now in good health* except as herein stated, that my habits are temperate and that I have not in contemplation any journey outside of the continental land limits of the United States of America and the Dominion of Canada, nor any hazardous undertaking except as herein stated; and upon the basis of the correctness of these statements I request that the new policy contain such provisions as applied for above, provided said Company approves the granting of same.

Witness

CERTIFICATE B. (*To be signed by the agent, if possible; if not, by some reliable person well known to the agent*)

I hereby certify that I am well acquainted with ..... who now requests his term policy to be changed, and that I believe from my own knowledge that his statements within made and signed by him are true and full.

CERTIFICATE C. (*To be signed by the agent when Certificate B is signed by some person other than the agent*)

I hereby certify that I am well acquainted with the person who signed Certificate B and consider him thoroughly trustworthy.

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THIS COPY OF THE APPLICATION

should be carefully examined and if any error or omission is found the policy should be returned immediately to the Home Office of the Company for correction.

3388149-80-81

Form No. 1. Application
Ed. March, 1919

EXECUTIVE OFFICERS
PRESIDENT
VICE-PRESIDENT
SECRETARY
ASST. SECRETARY
TREASURER
ASST. TREASURER

Page 1

I hereby apply to the ÆTNA LIFE INSURANCE COMPANY for a contract of insurance upon my life, and I do hereby declare that I am in sound health and have no disease or ailment not fully set forth herein; that the statements and answers herein made and signed by me are complete and true, and I agree that they shall form a part of the contract or policy issued by said Company upon my life. I further agree that no statement or declaration made to any agent, examiner, or any other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of said Company, or as changing it with any liability by reason thereof. I also acknowledge that all policies and agreements made by said Ætna Life Insurance Company are signed by one or more of its executive officers, and that no agent or other person not an executive officer can grant insurance, or waive any condition of its policies, or make any agreement which shall be binding upon said Company.

USE GOOD BLACK INK ONLY

1. a. What is your name? (*Write Plainly. Christian name in full.*) Sylvan I Nemeth
   b. Are you married? Yes c. Age next Birthday? 44 Years.
   d. Place of birth? St Joseph Mo (City or Town.) (State or Country.)
   e. Date of your birth? Month May, Day 10, Year 1875

2. a. Residence? Kansas City Mo (City or Town.) 3287 Tennessee Street (Street and No., if in cities.) (County.) (State.)
   b. Have you lived there for three years? Yes If not, where?
   c. What is your business address? (*If other than residence.*) 3939 Main St Kansas City Mo

3. a. What is your present occupation? (*If more than one, state full, if a clerk, shipping, mercantile or manufacturer, dropping or laborer, state class of goods sold, manufactured or handled.*) Hospital Supt
   b. If employed, state name of employer and location of employment Self
   c. In what occupations have you heretofore been engaged? Farm work
   d. Have you ever taken an Aerial flight? No
   e. Are you employed in the Army or Navy? No
   f. Are you now, or have you ever been connected with the manufacture or sale of malt or spirituous liquors? (*If so, when and how?*) No
   g. Do you contemplate such flight? No
   h. Do you contemplate such service? No

4. a. Do you contemplate changing your occupation? (*If so, state particulars.*) No
   b. Do you contemplate traveling in or residing in any foreign country? (*If so, state particulars.*) No

5. a. State kind of policy desired. (*Also whether Participating or Non Participating.*) Twenty Pay Life
   b. Amount of Insurance $ 25,000.00 written in 2 pieces of 10,000 and 15,000
   c. Premium $ 415.50 Annually.

(*If a Participating Policy, the dividends unless otherwise requested shall reduce the premiums or be paid in cash.*)

6. What is the Name, Residence, and Relationship, or insurable interest, of the person to be benefited by this Policy in event of your death?
   10,000 to Edna M Nemeth Wife
   15,000 to Edna M Nemeth Wife
   It is desired that the Policy be written with respect to the Beneficiary as nearly in accordance with the above request as the experience of the Company will suggest as being most likely to meet the requirements, and the acceptance of the Policy so written will be regarded as an acknowledgment that the Company has complied with the wishes of the applicant.

7. Have you personally employed or consulted any Physician during the last five years? (*If so, give names and residences of all and state for what cause.*) Influenza 1921 - Complete rec
   Dr Wm Lemmon Kansas City Mo

8. Has any proposal or application ever been made or submitted to any Company, Association, Agent or Physician, for which insurance on your life is now pending or has not been granted for the full amount, and of the same kind then applied for? (*If so, state particulars and the names of all such Companies, Associations, Agents or Physicians.*) No

9. a. What amount of insurance is now in force on your life, and in what Companies or Associations? $5,000. Aetna Life Ins Co
   b. Approximate date of last insurance granted by each Same about Nov 1921

10. Has any Physician, Company, Association or Agent ever expressed an unfavorable opinion of your life with reference to the insurance or refused to reinstate insurance that has lapsed? (*If so, state particulars.*) No

(*Use this space, if necessary, in further explanation of the answers to any of the above questions.*)

Dated Nov 7, 1922 Witness R E Skinner Applicant sign here Edna M Nemeth

(*The Answers to the following questions must be filled in by the EXAMINING PHYSICIAN, who must also witness the signature of the applicant below. If further explanations to any of the following answers are necessary, USE BLANK LINES AT THE FOOT OF THIS PAGE, noting the number of the question to which the explanation applies.*) Use Good BLACK INK ONLY

11. FAMILY RECORD:

	LIVING. Age?	Health?	DEAD. Age?	Cause of Death?	Date of Death?
Father,		good	33	drowned at St Joseph Mo	1880
Father's Father,		dead	69	do not know	do not know
Father's Mother,		dead	82	do not know	do not know
Mother,		dead	33	Childbirth	1883
Mother's Father,		dead	80	do not know	do not know
Mother's Mother,		dead	70	do not know	do not know
Brothers,	None				
Sisters,	Two		3	Croup	Infancy

12. Have you ever had any of the following diseases? (*Answer Yes or No, opposite each. If yes, state the date, duration and severity of illness with full particulars.*)

Abscess,	No	Consumption,	No	Enlargement of Veins,	No	Gout,	No	Neuralgia, No	Tumors, No
Apoplexy,	No	Disease of the Heart,	No	Fits,	No	Gravel,	No	Paralysis, No	Ulcers, No
Appendicitis,	Yes	Disease of Liver,	No	Fistula,	No	Habitual Headache,	No	Pellagra, No	Vertigo, No
Asthma,	No	Dropsy,	No	Gall Stone,	No	Hip Joint Disease,	No	St. Vitus' Dance, No	
Bronchitis (Chronic),	No	Enlargement of Glands,	No	Goitre,	No	Jaundice,	No	Spitting of Blood, No	

13. Have you had Inflammatory Rheumatism? (*If so, state severity and date of each attack.*) No
14. Are you subject to Dyspepsia, Dysentery, or Diarrhoea? No
15. Have you had any disease or severe sickness during the last seven years? (*If so, state the particulars of each case, and the name of the attending physician.*) Nov 1921 Influenza Complete rec
16. Have you either gained or lost weight during the last five years? (*If so, state particulars.*) No
17. Have you ever changed your residence on account of your health? (*If so, state particulars.*) No
18. Have you during the last five years lived in the same house with any one suffering from consumption? (*If so, state particulars.*) No
19. Which parent do you resemble in height, weight, and general characteristics? Mother
20. Have you been intemperate in the use of either malt or spirituous liquors during the past ten years? No
21. Do you use either malt or spirituous liquors daily or nearly every day? No
22. How often, and in what quantity do you use either of them? None
23. Have you used any drug habitually or occasionally? No
24. Have you ever taken any cure or treatment for any habit? (*If so, what, and when?*) No

(*Additional Questions to be answered when the Applicant is a Woman.*)

25. a. Are you married?	b. How long married?	c. Number of labors?	d. Date of last labor?
26. a. Were labors normal?	b. Have you miscarried and if so from what cause and at what date?		c. Are you now pregnant?
27. a. Is your menstruation regular and normal?	b. Have you ever been treated for any disease of womb or ovaries?	c. Are there any tumors in the breasts or any other part of the body?	

28. If a widow, state date and cause of husband's death.

Jan 1921 All ear yeast Cured & Discharged - no after treatment Pleurisy purulent complete rec
No attack since Jan 1921 Pneumonia Left chest Not very ill Recovery Complete Chest X Ray

Dated at Kansas City, Mo this 18th day of November 1922

IN PRESENCE OF Jean Trimble Murphy (Examining Physician) Applicant must sign here Edna M Nemeth (Write the Christian name in full)

MEDICAL CERTIFICATE ON THE REVERSE OF THIS PAGE

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No. N 808571

Ætna Life Insurance Company

Hartford, Connecticut

ON THE LIFE OF

Edwin P. Haworth

SUM INSURED	$ 10,000.
Annual	PREMIUM FOR
FIRST FIVE YEARS	$ 271.60
THEREAFTER	$ 526.90
AGE 54	
DATE September 9, 1929	

EXAMINED BY cas

MODIFIED LIFE POLICY WITH CHANGE OF RATE AT END OF FIVE (5) YEARS. INSURANCE PAYABLE AT DEATH. NON-PARTICIPATING.

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Aetna Life Insurance Company

Hartford, Connecticut

No. N 808572 Age 54

(herein called the Company)

"EXHIBIT E"

HEREBY AGREES TO PAY

FIVE THOUSAND DOLLARS

(herein called the sum insured)

immediately upon receipt at its Home Office of due proof of the death of

EDWIN P. HAWORTH

(herein called the insured)

to the beneficiary, John ... Wepner, his executors, administrators or assigns, creditor, as interest may appear, but not to exceed Seventeen Hundred Dollars ($1700); the remainder, if any, to Jose M. Haworth, wife of the insured, if she survives the insured, otherwise to the executors, administrators or assigns of the insured.

This policy is issued and accepted subject to all the conditions, benefits and privileges described on the following pages, which are hereby made a part of this contract.

IN WITNESS WHEREOF the *ÆTNA LIFE INSURANCE COMPANY* has caused this policy to be executed at Hartford, Connecticut, this Ninth day of October 19 29

James B. Skinner
Secretary

E. B. Bramard
President

FIVE THOUSAND DOLLARS

(herein called the sum insured)

immediately upon receipt at its Home Office of due proof of the death of

EDWIN P. HAWORTH

(herein called the insured)

to the beneficiary, John ... Mepner, his executors, administrators or assigns, creditor, as interest may appear, but not to exceed Seventeen Hundred Dollars ($1700); the remainder, if any, to Jora M. Haworth, wife of the insured, if she survives the insured, otherwise to the executors, administrators or assigns of the insured.

This policy is issued and accepted subject to all the conditions, benefits and privileges described on the following pages, which are hereby made a part of this contract.

IN WITNESS WHEREOF the *ÆTNA LIFE INSURANCE COMPANY* has caused this policy to be executed at Hartford, Connecticut, this Ninth day of October 19 29

James B. Skinner
Secretary.

President.

Registrar.

MODIFIED LIFE POLICY WITH CHANGE OF RATE AT END OF FIVE (5) YEARS.
INSURANCE PAYABLE AT DEATH. NON-PARTICIPATING.

3537
4-'29

N-P. MODIFIED LIFE

(reverse side)

BENEFICIARY under this policy is hereby changed to Jora M. Haworth, wife of the insured.

Hartford, Conn. this 14th day of October 19 30.

(Form No. 422-A-B)

ÆTNA LIFE INSURANCE COMPANY,

Registrar.

Assistant Secretary.

1
Premiums and when payable

The Foregoing Agreement *is made in consideration of the* Annual *premium of* One hundred thirty-five *Dollars and* Eighty *Cents to be paid to the Company on or before the* Ninth *day of* October *in each and every year for five years, and of the* Annual *premium of* Two hundred sixty-three *Dollars and* Forty-five *Cents payable under the same conditions thereafter, during the lifetime of the insured.*

2
Who may borrow on the policy, receive cash values and exercise other privileges

During the lifetime of the insured, the right to receive all cash values, loans and other benefits accruing hereunder, to exercise all options and privileges described herein and to agree with the Company to any change in or amendment to this policy shall vest alone in the insured *(herein called the life owner), subject, however, to any assignment by said life owner.*

3
How beneficiary may be changed

The beneficiary may be changed as often as desired, and such change shall take effect on receipt at the Home Office of the Company, before the sum insured or any instalment thereof becomes due, of a written request accompanied by the policy for endorsement. If any beneficiary dies before the insured, the interest of such beneficiary shall vest in the life owner alone unless otherwise provided herein.

4
How premiums are payable

All premiums shall be paid in advance at the Home Office of the Company, or to its authorized agent, in exchange for a receipt signed by its Secretary or Assistant Secretary and countersigned by the agent. If any such premium is not paid when due, this policy shall cease, subject to the values and privileges hereinafter described; except that a grace of thirty-one days, during which the policy shall remain in full force, will be allowed for the payment of any premium after the first. If death occurs within the grace period, the premium, if unpaid, will be deducted from the amount payable hereunder.

Grace period

This policy shall not become effective until the first premium upon it is paid during the good health of the insured.

5
How premiums may be paid annually, semi-annually or quarterly

The Company will accept premiums for annual, semi-annual or quarterly periods at its published rates at the time this policy is issued, provided that before any change is made due written request shall be made to the Company before the end of the grace period.

6 How loans are made on the policy

The Company will make loans on the sole security of this policy, if there has been no default in payment of premium.

The loan may be for any amount which, with interest, shall not exceed the cash value in Table A for the end of the current policy year, less any unpaid premiums for such policy year. There is no loan value prior to the policy years for which values are shown in Table A.

Interest shall be at the rate of six per cent. per annum payable at the end of each policy year.

A loan agreement satisfactory to the Company shall be executed and sent with the policy to the Company at its Home Office. The Company will return the policy after proper endorsement.

The whole or any part of the loan may be repaid at any time.

If interest is not paid when due it shall be added to the principal and bear interest at the same rate, provided the total indebtedness shall be within the limit secured by the cash surrender value of the policy. Otherwise, non-payment of interest shall render the policy null and void thirty-one days after notice shall have been mailed by the Company to the last known addresses of the life owner, of the insured and of any assignee of record at the Home Office of the Company.

Any indebtedness to the Company on account of or secured by this policy shall be deducted from any settlement hereunder.

7 Non-forfeiting values

After the number of full years' premiums have been paid hereon for which values are shown in Table A and within three months after the due date of any unpaid premium, one of the following options may be elected by filing a written request with the Company at its Home Office accompanied by the policy.

Cash value

(a) To surrender the policy for the cash value set forth in Table A, less any indebtedness.

Paid-up insurance

(b) To have the policy continued as non-participating paid-up insurance, payable at the same time and under the same conditions as this policy, in the amount set forth in Table A; but any indebtedness on the policy will reduce the amount of paid-up insurance in such proportion as the indebtedness bears to the cash value at the due date of the premium defaulted.

Extended insurance

(c) To have the insurance continued as extended term insurance from the due date of the premium defaulted for the sum insured for the number of years and days set forth in Table A; except that if there is any indebtedness against the policy, the extended term insurance shall be for the sum insured less the indebtedness and for such a period as the cash value less the indebtedness will purchase according to the American Experience Table of Mortality and three and one-half per cent. interest.

Automatic extended insurance on failure to pay a premium

On default in payment of premium, if no one of the above options has been elected, the insurance will be continued automatically as extended term insurance under option (c).

The values of these options are mathematical equivalents calculated on the basis of the American Experience Table of Mortality with interest at three and one-half per cent. per annum. The reserve for which funds are to be held upon this policy shall be computed on the basis of the same mortality table with the same rate of interest for insurance payable at death with level premiums after the first five years, payable throughout the lifetime of the insured, and with premiums payable at half the same rate for the first five years. The cash value is equal to the reserve for the sum insured less a surrender charge of not more than two and one-half per cent. of the sum insured. At the end of the twentieth year and thereafter the cash value is the full reserve taken to the nearest dollar for each one thousand dollars of insurance.

Paid-up insurance or extended term insurance under this policy may be surrendered at any time for a cash value consisting of the reserve held therefor. Paid-up insurance will be entitled to a loan equal to its cash value upon the conditions herein prescribed for a loan upon this policy.

89

TABLE A

NON-FORFEITING VALUES FOR EACH $1,000 OF SUM INSURED.

THIS TABLE SHOWS THE NON-FORFEITING VALUES ABOVE DESCRIBED AT THE END OF CERTAIN POLICY YEARS. VALUES FOR INTERMEDIATE OR LATER PERIODS WILL BE COMPUTED UPON THE SAME BASIS AND QUOTED UPON REQUEST.

THE PAID-UP INSURANCE AND CASH VALUES FOR A SUM INSURED GREATER OR LESS THAN $1,000 WILL BE PROPORTIONATE. THE TERM OF THE EXTENDED TERM INSURANCE WILL BE RECKONED FROM THE DUE DATE OF THE UNPAID PREMIUM AND WILL BE THE SAME FOR ANY SUM INSURED.

INDEBTEDNESS WILL AFFECT THE VALUES AS ABOVE DESCRIBED.

N. P. L. ½P. 5 yrs. **Age 54**

AT END OF YEAR	EXTENDED TERM INSURANCE		PAID-UP INSURANCE	CASH OR LOAN VALUE	AT END OF YEAR	EXTENDED TERM INSURANCE		PAID-UP INSURANCE	CASH OR LOAN VALUE
	Years	Days				Years	Days		
3	..	350	$34	$20	13	5	282	$371	$265
4	1	66	43	26	14	5	351	406	291
5	1	114	51	32	15	6	40	439	323
6	1	354	81	51	16	6	79	470	351
7	2	326	128	82	17	6	105	503	379
8	3	240	173	113	18	6	118	529	407
9	4	104	216	144	19	6	121	556	433
10	4	290	257	173	20	6	214	602	475
11	5	73	297	205	25	6	9	715	601
12	5	191	335	235	30	4	322	809	717

The entire loan value for the end of any policy year will be available during the same year if the premium for that year has been paid.

8 Automatic premium loan

If due written request for the operation of this provision has been filed at the Home Office of the Company before default in payment of premium, thereafter until a written revocation of said request has been filed with the Company, the amount of any premium not paid before the end of the grace period will automatically be loaned by the Company in payment of such premium and charged as an indebtedness secured by this policy, subject to interest at the rate of six per cent. per annum as prescribed for loans, provided that the total indebtedness hereunder will then be within the loan value described in Section 6. If the loan value is insufficient to cover the whole premium, the Company will loan a pro rata premium for as long a period as the loan value will allow. At the end of such period, if the balance of the premium be not paid, this policy shall cease; subject, however, to thirty-one days' notice as provided in Section 6 hereof.

While this policy is continued in force, as above, the whole or any part of the indebtedness may be repaid and payment of premiums may be resumed at any time without furnishing evidence of the good health of the insured.

9 How policy may be reinstated

Within five years after default in any premium payment, if this policy has not been surrendered, it may be reinstated upon evidence of insurability satisfactory to the Company and by payment of arrears of premiums with interest at the rate of six per cent. per annum, and by payment or reinstatement of whatever indebtedness to the Company existed hereon at the date of default with interest from that date.

10 How insurance may be made payable in instalments if desired instead of in one sum

If it is so elected, the whole or any part of the net sum payable under this policy as a death claim, or as a cash value, will be paid under one of the modes described below instead of in one sum.

Election shall take effect on receipt at the Home Office of the Company, before the sum insured or any instalment thereof becomes due, of a written notice accompanied by the policy for endorsement.

In case no election has been made during the lifetime of the insured, the beneficiary may so elect after the death of the insured.

These modes of settlement are not applicable to a payee when the amount of each payment would be less than ten dollars.

If an election has been made requiring payment under one of these modes, the policy shall be surrendered, if required by the Company, when it becomes a claim, and a supplementary contract will then be issued for the mode elected.

Interest payments

MODE 1. The payment of interest on the net sum payable annually, semi-annually, quarterly or monthly at the end of each interest period. The amount of interest payment for each $1,000 of the net sum payable will be as follows:

Annual	$35.00	Quarterly	$8.64
Semi-annual	17.35	Monthly	2.87

At the death of the payee, the net sum payable with accrued interest will be paid to the executors or administrators of the payee, unless otherwise provided in the election.

Instalments of fixed amount

MODE 2. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments of any fixed amount specified in the election until the net sum payable, with interest thereon at three and one-half per cent. per annum and such excess interest as may be declared annually by the Company, is exhausted. At the death of the payee, the balance of the fund will be paid in one sum to the executors or administrators of the payee, unless otherwise provided in the election.

Instalments for fixed period

MODE 3. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments for a fixed period of years. The amount of instalment for each $1,000 of the net sum payable is shown in Table B.

TABLE B.

TERM OF INSTALMENT PAYMENTS	AMOUNT OF INSTALMENT				TERM OF INSTALMENT PAYMENTS	AMOUNT OF INSTALMENT			
	ANNUAL	SEMI-ANNUAL	QUARTERLY	MONTHLY		ANNUAL	SEMI-ANNUAL	QUARTERLY	MONTHLY
YEARS					YEARS				
5	$213.90	$107.99	$54.23	$18.15	25	$58.65	$29.66	$14.89	$4.99
10	116.14	58.69	29.45	9.86	30	52.57	26.58	13.35	4.47
15	83.85	42.37	21.29	7.12	35	48.34	24.46	12.29	4.11
20	68.03	34.36	17.27	5.78	40	45.21	22.91	11.51	3.85

Instalments for fixed period and life thereafter

MODE 4. The payment in advance of equal annual, semi-annual, quarterly or monthly instalments for a fixed period of years and for as long thereafter as the payee lives. The amount of instalment for each $1,000 of the net sum payable is shown in Table C. The attained age of the payee shall be taken as of the birthday next before the day on which the first instalment becomes due.

TABLE C

AGE ATTAINED BY PAYEE	ANNUAL INSTALMENT FOR 5 YEARS	ANNUAL INSTALMENT FOR 10 YEARS	ANNUAL INSTALMENT FOR 15 YEARS	ANNUAL INSTALMENT FOR 20 YEARS	AGE ATTAINED BY PAYEE	ANNUAL INSTALMENT FOR 5 YEARS	ANNUAL INSTALMENT FOR 10 YEARS	ANNUAL INSTALMENT FOR 15 YEARS	ANNUAL INSTALMENT FOR 20 YEARS
0	$39.91	$39.72	$39.50	$39.27	43	$54.79	$54.17	$53.18	$51.88
1	39.92	39.75	39.55	39.34	44	55.63	54.96	53.89	52.47
2	39.93	39.79	39.61	39.42	45	56.52	55.79	54.62	53.07
3	39.95	39.84	39.68	39.51	46	57.45	56.65	55.38	53.69
4	40.05	39.94	39.78	39.62	47	58.43	57.56	56.17	54.33
5	40.19	40.03	39.92	39.78	48	59.47	58.51	56.98	54.98
6	40.34	40.24	40.08	39.93	49	60.57	59.51	57.83	55.64
7	40.52	40.41	40.25	40.11	50	61.72	60.56	58.71	56.31
8	40.70	40.60	40.44	40.28	51	62.94	61.66	59.62	56.99
9	40.90	40.80	40.65	40.47	52	64.22	62.80	60.55	57.67
10	41.37	41.20	40.96	40.67	53	65.58	64.00	61.51	58.36
11	41.55	41.38	41.13	40.84	54	67.02	65.26	62.50	59.04
12	41.74	41.56	41.31	41.01	55	68.54	66.57	63.51	59.72
13	41.93	41.75	41.50	41.19	56	70.14	67.94	64.54	60.40
14	42.13	41.95	41.70	41.38	57	71.83	69.36	65.59	61.06
15	42.34	42.16	41.90	41.58	58	73.62	70.85	66.66	61.71
16	42.56	42.38	42.11	41.78	59	75.52	72.40	67.74	62.35
17	42.80	42.61	42.33	41.98	60	77.52	74.00	68.83	62.95
18	43.04	42.84	42.56	42.22	61	79.64	75.66	69.92	63.54
19	43.29	43.09	42.80	42.45	62	81.88	77.38	71.00	64.09
20	43.55	43.35	43.05	42.69	63	84.24	79.15	72.08	64.61
21	43.83	43.62	43.31	42.94	64	86.74	80.97	73.14	65.09
22	44.12	43.90	43.59	43.20	65	89.38	82.84	74.18	65.53
23	44.42	44.20	43.88	43.47	66	92.16	84.75	75.19	65.93
24	44.74	44.51	44.18	43.76	67	95.10	86.69	76.16	66.29
25	45.07	44.84	44.49	44.05	68	98.20	88.65	77.09	66.61
26	45.42	45.18	44.82	44.36	69	101.46	90.64	77.97	66.89
27	45.78	45.53	45.17	44.68	70	104.89	92.62	78.79	67.12
28	46.17	45.90	45.53	45.02	71	108.49	94.60	79.55	67.32
29	46.57	46.29	45.90	45.37	72	112.26	96.55	80.24	67.48
30	46.98	46.70	46.28	45.73	73	116.20	98.47	80.86	67.61
31	47.42	47.13	46.68	46.10	74	120.32	100.34	81.42	67.72
32	47.89	47.58	47.10	46.49	75	124.60	102.15	81.90	67.80
33	48.37	48.05	47.54	46.90	76	129.03	103.87	82.32	67.86
34	48.88	48.54	48.01	47.32	77	133.62	105.50	82.68	67.90
35	49.41	49.05	48.49	47.76	78	138.33	107.02	82.97	67.93
36	49.98	49.59	48.99	48.22	79	143.16	108.42	83.21	67.95
37	50.56	50.16	49.52	48.69	80	148.08	109.70	83.39	68.03
38	51.18	50.75	50.07	49.18	81	153.05	110.85	83.54	Ages 81 and over same as age 80
39	51.83	51.37	50.64	49.68	82	158.05	111.86	83.65	
40	52.52	52.02	51.24	50.20	83	163.04	112.74	83.73	
41	53.24	52.71	51.86	50.74	84	167.97	113.49	83.79	
42	53.99	53.42	52.51	51.30	85 and over	172.81	114.12	83.85	

Note: To determine the semi-annual, quarterly or monthly instalments under the Fourth Mode multiply the annual instalment by decimal:
.506 for semi-annual instalments.
.255 for quarterly instalments.
.085 for monthly instalments.

Excess Interest

In addition to any payments by the Company for a fixed period of years or to any interest payments under these modes of settlement, payments of such excess interest as may be declared annually by the Company will be made.

Commutation of future payments

Unless otherwise provided in the election, the present value of any unpaid instalments under Modes 3 or 4, commuted on the basis of three and one-half per cent. interest per annum, will be paid in one sum at the death of the payee to the executors or administrators of the payee.

If it is specifically provided in the election, the payee may at any time withdraw under Mode 1 a part or all of the net sum payable, under Mode 2 the balance of the fund, or under Mode 3 the present value of the unpaid instalments commuted on the basis of three and one-half per cent. interest per annum.

All sums payable by the Company under this policy shall be payable at its Home Office. The sum insured will be payable under the terms hereof only upon receipt by the Company of this policy duly released.

11
Statements in application are representations and not warranties

All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid the policy or be used in defence to a claim under it unless it is contained in the written application herefor and unless a copy of such application is attached hereto when issued.

12
Incontestability

This policy and the application herefor, a copy of which application is attached hereto and made a part hereof, constitute the entire contract between the parties hereto, and it shall be incontestable ~~after it has been in force during the lifetime of the insured for a period of two years~~ from its date of issue except for non-payment of premium.

Rule governing if age has been misstated

If the age of the insured has been misstated the amount payable hereunder shall be such an amount as the premium paid would have purchased at the Company's published rate now in use for the correct age. Age will be admitted on proof satisfactory to the Company.

13
~~**Amount payable in event of suicide**~~

~~If the insured shall commit suicide within two years from the date hereof, while sane or insane, the Company will be liable only for an amount equal to the premiums paid in cash hereunder.~~

14
Policy non-participating

This policy shall not be entitled to share in the surplus earnings of the Company.

15
Assignments

No assignment of this policy shall be binding upon the Company unless and until the original or a duplicate thereof is filed at its Home Office. The Company does not assume any responsibility for the validity of an assignment.

16
All agreements must be signed by an executive officer

All agreements made by the Company are signed by its President, Vice-President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer. No other person can alter or waive any of the conditions of this policy, extend the time for paying a premium or make any agreement which shall be binding upon the Company.

PERMANENT TOTAL DISABILITY PROVISION

If, before default in payment of premium and before attaining the age of sixty years, the insured becomes totally and permanently disabled by bodily injuries or disease and is thereby prevented from performing any work or conducting any business for compensation or profit, the following benefit will be available:

A waiver of the payment of premiums falling due during such disability.

If before attaining the age of sixty years the insured becomes totally disabled by bodily injuries or disease and is thereby prevented from performing any work or conducting any business for compensation or profit for a period of ninety consecutive days, then, if satisfactory evidence has not been previously furnished that such disability is permanent, such disability shall be presumed to be permanent. In such a case, the benefit shall accrue from the expiration of the said ninety days, but not from a date more than six months prior to the date that evidence of such disability satisfactory to the Company is received at its Home Office. No benefit shall accrue prior to the expiration of said ninety days unless during that period evidence satisfactory to the Company is received at its Home Office while the insured is living that the total disability will be permanent, in which event the benefit will accrue from the commencement of disability.

If the insured meets with the irrecoverable loss of the entire sight of both eyes, or the total and permanent loss of the use of both hands or of both feet, or of such loss of one hand and one foot, such loss shall be considered total and permanent disability within the meaning of this provision.

No benefit, however, will be allowed hereunder for disability resulting directly or indirectly on account of military or naval service by the insured in time of war.

The benefit under this provision is conditioned upon evidence of the continuance of total disability of the insured satisfactory to the Company being furnished when requested and upon the representatives of the Company being permitted to examine the insured at any time, but such evidence or examination shall not be required oftener than once a year after the expiration of two years from the acceptance of such evidence. If it shall appear to the Company that the insured is able to perform any work or conduct any business for compensation or profit after a claim has been allowed, then, except in case of the irrecoverable loss of the entire sight of both eyes, or the irrecoverable total and permanent loss of the use of both hands or of both feet, or of such loss of one hand and one foot, the disability benefit shall cease.

Premiums waived by the Company on account of this provision will not be deducted from any settlement under this policy, and the sum insured and loan and cash surrender values will be the same as if the premiums waived had been paid in cash.

The consideration for this provision is an additional premium of Eight Dollars and Fifteen Cents, which consideration is included in the premium named in this policy, but such additional premium will not be required after the insured attains the age of sixty years.

This provision for permanent total disability will be annulled upon written request of the life owner, and assignee if any, and the return of the policy for proper endorsement; thereafter the premium required for this policy will be reduced by the consideration charged for this provision.

This provision is attached to and a part of Policy No. N 808572 issued by the ÆTNA LIFE INSURANCE COMPANY on the life of

Edwin P. Haworth

Hartford, Conn., this 9th day of October, 19 20

ÆTNA LIFE INSURANCE COMPANY.

James B. Stimson

Registrar. *Secretary.*

PERMANENT TOTAL DISABILITY PROVISION—WAIVER OF PREMIUMS IF DISABILITY OCCURS BEFORE AGE SIXTY—FULL INSURANCE PAYABLE AT DEATH.

Form No. 3867
Dis. 4 L and E.
1-28

27

THIS COPY OF THE APPLICATION

should be carefully examined and if any error or omission is found the policy should be returned immediately to the Home Office of the Company for correction.

Form No. 673
Edition Nov. 1926
Life Dept. Policy Division
Chicago Section

N 404521 - 570

APPLICATION FOR CONVERSION OF TERM POLICIES

Aug 13 1929

I, Edwin P Haworth of Kansas City, Mo

County of Jackson State Prov. of Mo, hereby apply to the ÆTNA LIFE INSURANCE COMPANY for changed insurance on my life, in accordance with the conditions of Term Policy No. 3385581 NW issued by said Company, and I hereby certify that said policy is not now assigned except to and agree that the statements and answers in the application for said term policy shall be the basis of the new contract or policy herein applied for and form a part of the same, except that the kind of policy, amount, premium and beneficiary shall be as specified below.

If entire term policy is not now to be converted, shall the balance be continued as term insurance? all converted

Kind of policy desired 20 P Modified Life (If a participating policy, the dividends unless otherwise requested shall reduce premiums or be paid in cash) — Disability Provision (1-3 or 4) 4 — Double Indemnity (Yes or No) No

Date of New Policy 9-29 Amount $ 12,000 - 5,000 Premium $ 271.80 - 135.90 Annually

Beneficiary to be the same as now written in term policy As per Policy No. 3385581 Both policies to Estate of Haworth Wife —

I agree that the acceptance of the new policy by me is to be regarded as an acknowledgment that the same is satisfactory, and that all insurance under said term policy, or the portion thereof converted as herein requested, shall thereupon cease.

Witness [signature] X

Note: If Double Indemnity provision or a form of Permanent Total Disability benefit not now included in the term policy is desired, Certificate A should be signed by the insured and certified to as required under Certificates B and C. Re-examination may be required if additional Disability coverage is requested, but must not be procured until authorized by the Company.

CERTIFICATE A. I further certify (unless otherwise stated below) that I have never had any mental disorder or disease of the heart, brain or nervous system, nor suffered impairment of the use of an eye, an arm, hand, leg or foot; that my eyesight or hearing is not impaired; that since making my last application for insurance in said Company there has been no material change in my mental or physical condition and I have not consulted or been prescribed for or treated by any physician or any practitioner; (*State here any exceptions to the above with names and residences of all physicians or other practitioners*)

that my occupation is ..... (explain fully) ..... which I do not contemplate changing;

that I am not now nor have I been connected with any military or naval organization, except as follows:

that I do not contemplate any military or naval service or any aeronautic flight or submarine descent, except as follows:

that *I am now in good health* except as herein stated, that my habits are temperate and that I have not in contemplation any journey outside of the continental land limits of the United States of America and the Dominion of Canada, nor any hazardous undertaking except as herein stated; and upon the basis of the correctness of these statements I request that the new policy contain such provisions as applied for above, provided said Company approves the granting of same.

Witness

CERTIFICATE B. (*To be signed by the agent, if possible; if not, by some reliable person well known to the agent*)

I hereby certify that I am well acquainted with ..... who now requests his term policy to be changed, and that I believe from my own knowledge that his statements within made and signed by him are true and full.

CERTIFICATE C. (*To be signed by the agent when Certificate B is signed by some person other than the agent*)

I hereby certify that I am well acquainted with the person who signed Certificate B and consider him thoroughly trustworthy.

73

THIS COPY OF THE APPLICATION

should be carefully examined and if any error or omission is found the policy should be returned immediately to the Home Office of the Company for correction.

938879-80-81 Hj.

Page 1.

Form No. 5, Application
Rv. March, 1919

EXECUTIVE OFFICERS

PRESIDENT
VICE-PRESIDENT
SECRETARY
ASST. SECRETARY
TREASURER
ASST. TREASURER

I hereby apply to the ÆTNA LIFE INSURANCE COMPANY for a contract of insurance upon my life, and I do hereby declare that I am in sound health and have no disease or ailment not fully set forth herein; that the statements and answers herein made and signed by me are complete and true, and I agree that they shall form a part of the contract or policy issued by said Company upon my life. I further agree that no statement or declaration made to any agent, examiner, or any other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of said Company, or as changing it with any liability by reason thereof. I also acknowledge that all policies and agreements made by said Ætna Life Insurance Company are signed by one or more of its executive officers, and that no agent or other person not an executive officer can grant insurance, or waive any condition of its policies, or make any agreement which shall be binding upon said Company.

USE GOOD BLACK INK ONLY.

1. a. What is your name? (*Write Plainly Christian name in full.*) Edwin P. Haworth
   b. Are you married? Yes c. Age next Birthday? 45 Years.
   d. Place of birth? St. Joseph Mo. (City or Town.) (State-Country.)
   e. Date of your birth? Month May Day 10 Year 1875

2. a. Residence? Manassas City Va 26 & 27 Summit Street (City or Town.) (Street and No. or R. F. D. No.) (County.) (State.)
   b. Have you lived there for three years? Yes If not, where?
   c. What is your business address? (*If other than residence*) 2929 Main St N.C. Va

3. a. What is your present occupation? (*If more than one, state all; if a clerk, salesman, merchant, manufacturer, mechanic or laborer, state class of goods sold, manufactured or handled.*) Hospital Supt & Phthisiologist
   b. If employed, state name of employer and location of employment Self
   c. In what occupations have you heretofore been engaged? Tuberculosis work
   d. Have you ever taken an Aerial flight? No g. Do you contemplate such flight? No
   e. Are you employed in the Army or Navy? No b. Do you contemplate such service? No
   f. Are you now, or have you ever been connected with the manufacture or sale of malt or spirituous liquors? (*If so, when and how?*) No

4. a. Do you contemplate changing your occupation? (*If so, state particulars.*) No
   b. Do you contemplate traveling to or residing in any foreign country? (*If so, state particulars.*) Europe for 5 or 6 months No

5. a. State kind of policy desired. (*Also whether Partic. or Non-Partic.*)
   b. Amount of Insurance $25,000 - Issue in 2 policies of $10,000 each and $5000 (Term)
   c. Premium $ 415.50 Annually. N.P. 7 year term

(If a Participating Policy, the dividends unless otherwise requested shall reduce the premiums or be paid in cash.)

6. What is the Name, Residence, and Relationship, or insurable interest, of the person to be benefited by this Policy in event of your death?
   $10,000 to Cora M. Haworth Wife $5000 to Cora M. Haworth Wife and No 1 Reserve insurance partnership
   It is desired that the Policy be written with respect to the Beneficiary as nearly in accordance with the above request as the experience of the Company will suggest as being most likely to meet the requirements, and the acceptance of the Policy so written will be regarded as an acknowledgment that the Company has complied with the wishes of the applicant.

7. Have you personally employed or consulted any Physician during the last five years? (*If so, give names and residences of all and state for what cause.*) Pneumonia 1921 - Complete rec overy Dr McLemore N.C. Va

8. Has any proposal or application ever been made or submitted to any Company, Association, Agent or Physician, for which insurance on your life is now pending or has not been granted for the full amount, and of the same kind then applied for? (*If so, state particulars and the names of all such Companies, Associations, Agents or Physicians.*) No

9. a. What amount of insurance is now in force on your life, and in what Companies or Associations?
   $5,000 Aetna Life Ins Co.
   b. Approximate date of last insurance granted by each. Last about Nov. 1921

10. Has any Physician, Company, Association or Agent ever expressed an unfavorable opinion of your life with reference to life insurance or refused to reinstate insurance that has lapsed? (*If so, state particulars.*) No

(Use this space, if necessary, in further explanation of the answers to any of the above questions.)

Dated Nov 9 1922 Witness R.R. Kinser Applicant signs here Edwin P. Haworth

(The Answers to the following questions must be filled in by the EXAMINING PHYSICIAN, who must also witness the signature of the applicant below. If further explanations to any of the following answers are necessary, BE PARTICULAR TO USE THE BLANK LINES AT THE FOOT OF THIS PAGE, noting the number of the question to which the explanation applies.) Use Good BLACK INK ONLY

21. FAMILY RECORD.

	LIVING. Age?	LIVING. Health?	DEAD. Age?	DEAD. Cause of Death?	DEAD. Date of Death?
Father,		good	32	Consumption	1880
Father's Father,		dead	69	Do not know	Do not know
Father's Mother,		dead	82	Do not know	Do not know
Mother,		dead	35	Phthisis	1883
Mother's Father,		dead	80	Do not know	Do not know
Mother's Mother,		dead	70	Do not know	Do not know
Brothers, none					
Sisters, Two			45	Phthisis	1895
			3	Croup	Do not know

22. Have you ever had any of the following diseases? (*Answer Yes or No, opposite each. If yes, state the date, duration and severity of illness with full particulars.*)

Abscess,	No	Consumption,	No	Enlargement of Veins,	No	Gout,	No	Neuralgia,	No	Tumors,	No
Apoplexy,	No	Disease of the Heart,	No	Fits,	No	Gravel,	No	Paralysis,	No	Ulcers,	No
Appendicitis,	Yes	Disease of Liver,	No	Fistula,	No	Habitual Headache,	No	Pellagra,	No	Vertigo,	No
Asthma,	No	Dropsy,	No	Gall Stone,	No	Hip Joint Disease,	No	St. Vitus' Dance,	No		
Bronchitis (Chronic),	No	Enlargement of Glands,	No	Goitre,	No	Jaundice,	No	Spitting of Blood,	No		

23. Have you had Inflammatory Rheumatism? (*If so, state severity and date of each attack.*) No
24. Are you subject to Dyspepsia, Dysentery, or Diarrhoea? No
25. Have you had any disease or severe sickness during the last seven years? (*If so, state the particulars of each case, and the name of the attending physician.*) Nov 1921 Pneumonia
26. Have you either gained or lost weight during the last five years? (*If so, state particulars.*) No
27. Have you ever changed your residence on account of your health? (*If so, state particulars.*) No
28. Have you during the last five years lived in the same house with any one suffering from consumption? (*If so, state particulars.*) No
29. Which parent do you resemble in height, weight, and general characteristics? Mother
30. Have you been intemperate in the use of either malt or spirituous liquors during the past ten years? No
31. Do you use either malt or spirituous liquors daily or nearly every day? No
32. How often, and in what quantity do you use either of them? No
33. Have you used any drug habitually or occasionally? No
34. Have you ever taken any cure or treatment for any habit? (*If so, what, and when?*) No

(Additional Questions to be answered when the Applicant is a Woman.)

35. a. Are you married?	b. How long married?	c. Number of labors?	d. Date of last labor?
36. a. Were labors normal?	b. Have you miscarried and if so from what cause and at what date?		c. Are you now pregnant?
37. a. Is your menstruation regular and normal?	b. Have you ever been treated for any disease of womb or ovaries?	c. Are there any tumors in the breasts or any other part of the body?	
38. If a widow, state date and cause of husband's death.			

Jan 1907 Appendectomy - no after effects - Primary pneumonia complete recovery
No attacks since - Jan 1921 Pneumonia - left almost two weeks - Recovery complete - C.N.A. Corrigan M.D.

[illegible] Life Insurance Company

Hartford, Connecticut

ON THE LIFE OF

Edwin P. Haworth

SUM INSURED	$ 5000.
Annual PREMIUM FOR	
FIRST FIVE YEARS	$ 135.80
THEREAFTER	$ 263.45
AGE	54
DATE	October 8, 1929

EXAMINED BY CSS

CONTENTS

Premiums and [illegible] payable		
Who may borrow on the [illegible] privileges		
How beneficiary may be changed		
How premiums are payable		
How premiums may be paid annually, semi-annually or quarterly		
How loans are made on the policy		
Cash values and corresponding paid-up and extended insurance		
Automatic extended insurance on failure to pay a premium		
Automatic premium loan	4	
How policy may be reinstated	4	
How insurance may be made payable in instalments if desired instead of in one sum	4	
Statements in application are representations and not warranties	6	
Incontestability	6	
Rule governing if age has been misstated	6	
Amount payable in event of suicide	6	
Policy non-participating	6	
Assignments	6	
All agreements must be signed by an executive [illegible]		

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[fol. 77] EXHIBIT "F" TO PETITION

Claim of Benefit Under Total Disability Provision

To Ætna Life Insurance Company:

I, Edwin P. Haworth, who am named as the insured in four certain policies of life insurance issued by Ætna Life Insurance Company of Hartford, Connecticut, numbered respectively N 760251, N 808571, N 808572, and P 537284, say that I am entitled to the benefit of the total disability provision in each of said policies contained.

The insured says said policy N 760251 is dated October 9, 1928, the sum insured therein is ten thousand dollars ($10,000.00), the annual premium is $431.40, and there is no default in payment of premium; that policy N 808571 is dated September 9, 1929, the sum insured therein is ten thousand dollars ($10,000.00), the annual premium for the first five years is $271.60 and thereafter is $526.90, and there is no default in payment of premium; that N 808572 is dated October 9, 1929, the sum insured therein is five thousand dollars ($5,000.00), the annual premium for the fist five years is $135.80 and thereafter is $263.45, and there is no default in payment of premium; that policy P 537284 is dated November 9, 1921, the sum insured therein is five thousand dollars ($5,000.00), the annual premium is two hundred twenty-one and 45/100 dollars ($221.45) and there is no default in the payment of premium.

The insured says that he has not attained the age of sixty years; that more than eighteen months before this date, and while all of said policies were in force, he became totally and permanently disabled by disease and was thereby prevented from performing any work or conducting any business for compensation or profit; that on October 7, 1930, the insured made a sworn statement for the purpose of asserting and claiming his right to have said policies continued under the permanent and total disability provision contained in each of them, which statement was delivered to said Ætna Life Insurance Company; that more than six months before said date he became totally and permanently disabled; that within six months from said date he furnished evidence of such disability, and more than ninety days before said date he

furnished evidence that he had become totally disabled by disease and had thereby been prevented from performing any work or conducting any business for compensation or profit for a period of ninety consecutive days prior thereto. The insured further says that his disability has been con- [fol. 78] tinuous and uninterrupted from the date of his original disability and that he is still so disabled.

The insured says that all of the above described policies are now in full force and effect; that under the terms of said policies and each of them all annual premiums upon them, or any of them, becoming payable in the year 1930 or in the year 1931 or in the year 1932 are waived by reason of such disability, and the insured is entitled to have said policies continue in full force and effect without the payment of any further premium so long as his said disability shall continue.

The insured says this statement is made for the purpose of asserting and claiming his right to have said policies continue under the permanent total disability provision contained in each of them.

Edwin P. Haworth, The Insured.

STATE OF MISSOURI,
County of Jackson, ss:

Edwin P. Haworth, being duly sworn, on his oath says that the facts stated in the foregoing statement are true.

Edwin P. Haworth.

Subscribed and sworn to before me this 30th day of September, 1932. Marie Schulze, Notary Public Within and for Said County and State. My commission will expire February 12, 1935. (Notarial Seal.)

STATE OF MISSOURI,
County of Jackson, ss:

Julius Frischer, being duly sworn, on his oath says that he graduated from University Medical College in 1905 and since that time has been engaged in the practice of medicine and surgery in Kansas City, Missouri; that he has read the foregoing affidavit of Edwin P. Haworth and knows that the facts stated therein concerning his physical condition are

true; that he has known said Haworth for twenty years; that he is not related to him.

Affiant says that he first saw Mr. Haworth professionally on account of this illness on the 27th day of February, 1930; that the patient was suffering from hypertrophied prostate; that affiant performed upon him the operation known as fulguration; that the patient has been continuously disabled since that time; that the affiant has seen the patient [fol. 79] on an average of more than twice a month during the last year, and has from time to time given him medical treatment; that the last operation performed on the patient by affiant was on October 10, 1930; that on February 26, 1932, he gave a barium enema and took an X-ray picture of the colon which revealed colitis and a redundant bowel with loss of muscle tone and a very large caecum; that affiant last saw the patient on September 30, 1932. Patient has had and still has a hypertrophied prostate with residual urine. He also has aenemia. He has a mental status which has not improved. He has toxicity, stasis, lowered vitality and lowered resistance. I believe Mr. Haworth is permanently and totally disabled.

Julius Frischer, M. D.

Subscribed and sworn to before me this 1st day of October, 1932. Rena L. Dowling, Notary Public in and for Said County and State. My commission will expire June 15, 1933. (Notarial Seal.)

Affidavit

In the District Court of the United States for the Western District of Missouri, Western Division

In Equity. No. 2670

Ætna Life Insurance Company of Hartford, Connecticut, a Corporation, Plaintiff,

vs.

Edwin P. Haworth and Cora M. Haworth, Defendants

State of Missouri,
County of Jackson, ss:

Chas. C. Byers, of lawful age, being duly sworn, upon his oath states that he is one of the solicitors for the Ætna Life

Insurance Company of Hartford, Connecticut, a corporation, plaintiff in the above entitled suit; that Exhibit F, appended to and identified in the petition in said cause, is a true and correct copy of the original thereof.

Chas. C. Byers.

Subscribed and sworn to before me this 30th day of October, 1935. Dorothy F. Petthoff, Notary Public. My commission expires September 22, 1939. (Seal.)

[fol. 80] IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANTS TO DISMISS PETITION—Filed February 4, 1935

Now come defendants and move the court to dismiss plaintiff's bill or petition of complaint herein for the following reasons:

1. Plaintiff's said bill or petition does not state facts sufficient to constitute a valid cause of action against these defendants, and contains not any matter of equity, whereon this court can ground any decree, or give the plaintiff any relief or assistance, as against these defendants, or either of them.

2. It appears from the face of plaintiff's bill that plaintiff issued the various policies described therein as valid policies of insurance upon the life of Edwin P. Haworth, that their terms are not controverted, that there is no present cause of action upon them, and that until either said Edwin P. Haworth shall die or shall elect to take and demand the then cash surrender value of said policies no cause of action will arise upon them, that in either event the issues will be whether such policies are then in force, and, if so, the amount due upon them, which will rest upon a determination of facts, trial of which by jury is a matter of right in a common law court.

The value of each and every one of said policies is more than $20.00, and for a court of equity to undertake to assume, or confer upon itself, without consent of these defendants, jurisdiction to try such issues would deprive these

defendants of the rights conferred upon them by the Seventh Amendment of the Constitution of the United States.

Rees Turpin, Solicitor for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

OPINION SUSTAINING MOTION TO DISMISS—Filed August 22, 1935

On June 1, 1911, the Ætna Life Insurance Company, plaintiff here, issued its policy of life insurance in the principal amount of $10,000 to Edwin P. Haworth, one of the defendants. The policy contained a provision obligating the company, subject to certain conditions unnecessary to be stated, annually to pay the insured one-twentieth of the principal amount of the policy if he should become wholly and permanently disabled and relieving the insured from payment of premiums after he had become so disabled. The [fol. 81] insured did not pay the premium due June 1, 1934, and has not paid that premium, asserting that on and before that date he was wholly and permanently disabled and so relieved from the payment of that as well as of subsequent premiums.

The defendant, Cora M. Haworth, is the wife of the defendant Edwin P. Haworth and is the beneficiary in the policy.

The insurance company denies that the insured was wholly and permanently disabled as he asserts and therefore contends that the policy lapsed for failure to pay the premium due June 1, 1934, and that the maximum amount which will be due to the beneficiary on the death of the insured, under an extended term insurance provision of the policy, certain indebtedness for money borrowed on the policy having been cancelled, will be $45.00.

Such are the essential allegations of plaintiff's petition. Based upon them plaintiff prays a declaratory judgment adjudicating the right of the parties under the policy. Defendants have moved to dismiss the petition. Whether that motion shall be sustained is the question now for decision.

The plaintiff desires to have judicially determined now the question whether the insured was wholly and perma-

nently disabled on June 1, 1934. If that question can be decided now and is decided adversely to the insured's contention the liability of the plaintiff definitely and finally will be limited to the ultimate payment of $45.00. An alternative is that at the death of the insured (and that may be 20 years hence) the beneficiary will sue on the policy. If she then is able to prove that on and from June 1, 1934, the insured was wholly and permanently disabled she will be entitled to judgment against the plaintiff for the full amount of the policy less indebtedness. The plaintiff fears that at the possibly remote date such a suit may be brought the witnesses and evidence now to be had no longer will be available.

In this situation plaintiff seeks to make use of the so-called Declaratory Judgment Act approved June 14, 1934. That Act provides:

(1) In cases of actual controversy the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be [fol. 82] prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

In support of the motion to dismiss learned counsel for defendants maintain that the Declaratory Judgment Act is unconstitutional. His argument in this behalf is that under the Constitution (Article III, Section 2) the judicial power

of the national courts extends only to "cases" and "controversies." Congress cannot extend that power beyond the scope limited by the Constitution and hence cannot extend it to what is neither a case nor controversy. Liberty Warehouse Co. vs. Grannis, 273 U. S. 70, 74, 76; Willing vs. Auditorium Association, 277 U. S. 274, 289, 290. This Act, says counsel, would extend the judicial power beyond the limitation.

But the very language of the Act destroys the argument. Undoubtedly it was drawn with the constitutional limitation and the cited decisions of the Supreme Court in mind. By its initial words the declaratory judgments provided for are limited to "cases of actual controversy." Neither the mere designation of them as "declaratory" judgments nor the facts that they embody a new method for the invocation of the judicial power invalidate them under the Constitution. Nashville etc. Ry. vs. Wallace, 288 U. S. 249, 264.

The real question here is whether the case stated by the petition is within the legitimate scope of the Declaratory Judgments Act. Does it present a present controversy in the constitutional sense between the plaintiff and defendants—"an adversary proceeding, involving a real, not a hypothetical controversy," and is the judgment sought a judgment finally determinative of that controversy. Nashville etc. Ry. Co. vs. Wallace, supra. If an actual controversy in such a sense is presented has the plaintiff, with [fol. 83] respect to that controversy, any present "rights or other legal relations" to be declared?

It is my view that both these questions must be answered in the negative.

Let us suppose a simpler and yet similar situation. Let us suppose a policy of life insurance to X with Y as beneficiary. Payment of premiums has been discontinued. The company learns that Y asserts that X died before the policy lapsed. But Y has not brought suit. If, as the company contends, X still was living when the policy lapsed, the company never can be held to liability on the policy. Can the company seek a declaratory judgment that X was living when the policy lapsed and so establish judicially a fact that at some future time, when Y has sued, will defeat Y's recovery?

If the company can seek such a declaratory judgment then any person who has entered into a contract with

another and who fears he may be sued by that other for breach of contract may proceed, as he does the plaintiff here, in advance of the institution of that suit, to have determined an issue of fact which that suit will present. Certainly in the enactment — this statute the Congress contemplated no such radical departure in our jurisprudence from the old procedure.

The truth is that in the case supposed there is no present actual controversy between the company and Y and that is a prerequisite to the availability of the remedy the new statute provides. There is now only a potential controversy, a possible future controversy, but no present actual controversy. How can there be a controversy relating to a breach of contract unless it is initiated by him who asserts the breach and claims damages therefor? A controversy, in the constitutional sense, certainly does not exist merely because one asserts, privately, out of court, that X was dead on a given date and another, in a petition for a declaratory judgment, denies that X was dead on a given date.

Moreover, the truth is that in the case supposed the company has no present "rights or other legal relations" to be declared. The "rights" referred to in that phrase in the Act are rights to some sort of "relief". Note the language following this phrase,—"whether or not *further* relief is or could be prayed." To have predetermined, by a showing now, an issue of fact that will be involved in a case that may be brought hereafter by another may indeed relieve one from making the same showing when the case is tried, but it is no sort of relief from or against that other.

What has been said of the supposed case is applicable to the case presented.

[fol. 84] Learned counsel for plaintiff has given an interpretation to the Declaratory Judgment Act far broader than that intended and one which the language of the Act will not support.

The motion to Dismiss is sustained. The case is dismissed. It Is so Ordered.

An exception is allowed to plaintiff.

Merrill E. Otis, District Judge.

[File endorsement omitted.]

In United States District Court for the Western District of Missouri, Western Division

In Equity. No. 2670

Ætna Life Insurance Company of Hartford, Connecticut, a Corporation, Plaintiff,

vs.

Edwin P. Haworth and Cora M. Haworth, Defendants

Decree—Filed August 22, 1935

On the 22nd day of August, 1935, at this term, this cause having heretofore come on to be heard upon defendants' motion to dismiss plaintiff's petition, same having been briefed and argued by counsel, and defendants' said motion to dismiss having been by this Court sustained, it was therefore Ordered, Adjudged, and Decreed by the Court, as follows, viz.:

That the case and the petition or bill of complaint of the plaintiff be and the same are hereby dismissed for the reason that the bill does not state facts sufficient to constitute a valid cause of action against these defendants, and contains not any matter of equity whereon this Court can ground any decree, or give the plaintiff any relief or assistance as against these defendants, or either of them; and that the defendants recover from the plaintiff their costs herein.

Merrill E. Otis, United States District Judge.

Approved as to form:

Morrison, Nugent, Wylder & Berger, Attorneys for Plaintiff. Rees Turpin, Attorney for Defendants.

[File endorsement omitted.]

[fol. 85] In United States District Court

Petition for Rehearing—Filed September 9, 1935

Comes now the plaintiff and moves that the final decree herein be vacated and set aside, and that a rehearing of this cause be granted on the following grounds:

(1) That the Chancellor was under a misapprehension in refusing to grant equitable relief to the plaintiff in so far

as he rested his decision upon the grounds that the case before the court does not present an actual controversy within the meaning of the Federal Declaratory Judgments Act, and that the plaintiff is not possessed of rights and legal relations, in the premises, to be declared, for the following reasons, to-wit:

(a) An actual controversy exists in that the extant facts and conditions determinative of liability or non-liability of the plaintiff are now immutably fixed, and not subject to change or development of any kind; that a sharp and definite issue now exists between the plaintiff and the defendants as to the decisive fact of disability, or non-disability, upon the part of the defendant, Edwin P. Haworth, prior to his attaining the age of sixty years; that this decisive issue or controversy, is subject to a present decision, under the terms of the declaratory judgments act; and that the inherent and only purpose of the act is to provide a procedure for the determination of the rights and legal relations between parties (in this case, the existence or absence of a legal obligation of plaintiff upon the five policies in question) prior to, and in lieu of, the institution of an action at law or suit in equity under common law or conventional equity procedure.

(b) That the purpose of the declaratory judgments act would be frustrated and rendered totally ineffective in all cases relating to a breach of contract, if it were held that the "controversy" referred to in the act must be initiated by him who asserts the breach and claims damages therefor, as such an interpretation and definition of the term "controversy", would, in all matters of contract, limit declaratory relief to cases instituted by the party or parties who would have the right to, and for all practical purposes might as well, institute an action for breach, under common law procedure; and that this construction and definition of the term "actual controversy" is in conflict with the decision of the Supreme Court in the case of Nashville, Chattanooga & St. Louis Ry. Co. vs. Wallace, 288 U. S. 249, 77 L. ed. 730.

(c) That the rights and other legal relations existing between the parties hereto are at this time under the terms of the Federal Declaratory Judgments Act, subject to deter- [fol. 86] mination and definition, relative to the absence or

presence of legal obligation upon the five policies involved, upon the part of the plaintiff, and the presence or absence of vested rights of the defendants in said five policies; and that the "relief" prayed for and due this plaintiff is a declaratory decree defining the absence of obligation or liability upon the part of the plaintiff relative to said five policies.

2. That the court was manifestly in error in alleging, as appears from its written opinion, upon which rested its final determination, that no controversy based upon an alleged breach of contract could be initiated except by him who asserts the breach and claims damages therefor, and that no issue of fact can be determined, under the act, in a controversy of this character, in advance of the institution of a suit based upon an alleged breach of contract.

(a) In the first place, plaintiff submits that plaintiff, itself, alleges in its bill herein, a breach of contract upon the part of defendant, Edwin P. Haworth, in that the latter has failed and refused to pay his contractual premiums upon the five policies in question, that the issues of fact thus arising are but preliminary and incidental to a defining and declaring of the rights and legal relations existing between the parties hereto; and that the construction thus placed upon the declaratory judgments act, and the application given it, necessarily destroy the effectiveness of the act and fail to give it the application essential to the accomplishment of its purpose; the determination of rights and other legal relations prior to, and in the absence of, a resort to common law or equity procedure.

The plaintiff therefore respectfully moves that a rehearing be granted herein.

E. R. Morrison, Chas. C. Byers, Solicitors for Plaintiff.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO FILE PETITION FOR REHEARING—Filed September 10, 1935

Leave of court is hereby granted to the plaintiff in the above entitled suit to file herein its petition for a rehearing.

Merrill E. Otis, Judge.

[File endorsement omitted.]

[fol. 87] IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO PLAINTIFF TO AMEND PETITION BY INTERLINEATION AND DENYING PETITION FOR REHEARING—October 19, 1935

This day plaintiff is given leave to amend petition by interlineation, and Motion for a Rehearing is submitted and denied by the Court.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed October 19, 1935

The plaintiff, Ætna Life Insurance Company of Hartford, Connecticut, a corporation, believing itself to be aggrieved by the final order or decree of this Court made and entered in this cause on the 22nd day of August, 1935, dismissing the petition or bill in said action for insufficiency of fact to constitute a valid cause of action in equity as against the defendants, and for insufficiency of fact to constitute a case of actual controversy as between the parties, entitling this plaintiff to relief under the provisions of section 400, Title 28, United States Code Annotated, known as the "Federal Declaratory Judgment" statute, does hereby appeal therefrom to the Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, that a citation be issued to the above named defendants, Edwin P. Haworth and Cora M. Haworth, commanding them to appear before the Circuit Court of Appeals for the Eighth Circuit to do and receive what may appertain

to justice to be done in the premises, and that a transcript of the record, proceedings, and papers upon which said order and decree were made be duly authenticated and sent to the Circuit Court of Appeals for the Eighth Circuit.

Ætna Life Insurance Company of Hartford, Connecticut, a Corporation, by E. R. Morrison, Chas. C. Byers, Solicitors for Plaintiff.

[File endorsement omitted.]

In United States District Court

Assignment of Errors—Filed October 19, 1935

Now comes Ætna Life Insurance Company of Hartford, Connecticut, a corporation, plaintiff herein, by its solicitors, and, having prayed an appeal from the decree entered in this cause on August 22, 1935, dismissing plaintiff's bill or [fol. 88] petition heretofore filed in this cause for want of equity, and for insufficiency of fact to constitute a case of actual controversy as between the parties, entitling this plaintiff to relief under the provisions of section 400, Title 28, United States Code Annotated, known as the "Federal Declaratory Judgment" statute, respectfully shows that said decree is erroneous and should be reversed and set aside, for the following reasons:

I

That the United States District Court for the Western District of Missouri erred in not overruling defendants' motion to dismiss plaintiff's bill or petition, and in rendering a decree of dismissal of said bill or petition.

II

That the Court erred in dismissing the bill or petition of complaint for want of equity.

III

That the Court erred in dismissing the bill or petition of complaint upon the ground of insufficiency of fact to constitute an actual controversy as between the parties hereto, coming within the purview of section 400, Title 28, United

States Code Annotated, known as the "Federal Declaratory Judgment" statute, and entitling this plaintiff to relief, under the provisions of said statute, by a declaring of the rights and other legal relations of the parties hereto relative to the five policies of insurance in said bill or petition described and referred to.

IV

That the Court erred in dismissing said petition or bill of complaint without requiring the defendants to answer, and without permitting this plaintiff to offer and introduce evidence substantiating the allegations in said bill or petition contained, and without thereafter rendering a decree defining the rights and liabilities of the parties hereto relative to the said five policies of insurance, either as a court of equity acting within its chancery powers, irrespective of the provisions of said Section 400, Title 28, United States Code Annotated, or, by granting the applicable relief provided by the terms of said Section 400, Title 28, United States Code Annotated.

V

That the Court erred in holding that the facts set out in the bill or petition of plaintiff did not show the existence of an actual controversy between the parties, coming within [fol. 89] the purview of Section 400, Title 28, United States Code Annotated, and in dismissing said bill or petition upon that ground.

Wherefore, and in order that the foregoing Assignment of Errors may be and appear of record in this cause, Ætna Life Insurance Company of Hartford, Connecticut, a corporation, plaintiff herein, presents the same to this Court, and prays that such disposition may be made thereof as is in accordance with the law and the statutes of the United States in such case made and provided; and plaintiff further prays that said final decree may be reversed and the District Court be directed to enter a decree in this cause in conformity with the prayer of the bill of complaint.

E. R. Morrison, Chas. C. Byers, Solicitors for Plaintiff.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL, ETC.—Filed October 19, 1935

Upon petition of the solicitors for the Plaintiff, it is hereby ordered as follows:

1. That the appeal presented by the plaintiff herein be, and the same hereby is, allowed, and that a certified transcript of the record and proceedings be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit in accordance with the rules of practice; that a cost bond in the sum of $250.00 be filed.

2. That a citation be issued admonishing the defendants to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at St. Louis, Missouri, on or before thirty-nine (39) days after the day upon which said citation is dated.

Merrill E. Otis, Judge, United States District Court for the Western District of Missouri.

[File endorsement omitted.]

Bond on appeal for $250.00, approved and filed November 25, 1935, omitted in printing.

[fol. 90] IN UNITED STATES DISTRICT COURT

ORDER ENLARGING TIME FOR PREPARING AND FILING TRANSCRIPT OF THE RECORD—Filed November 25, 1935

On this, the 25th day of November, 1935, upon application of the appellant and for good cause shown, the time for [fol. 91] preparing and filing the transcript of the record for appeal in this cause is hereby extended until January 26, 1936.

Merrill E. Otis, Judge.

[File endorsement omitted.]

In United States District Court

Præcipe for Transcript—Filed January 8, 1935

To the Clerk of the United States District Court for the Western District of Missouri:

Sir:

You will please prepare a transcript of record to be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the appeal heretofore taken in this case, and include therein the following:

1. Record entry, showing filing of plaintiff-appellant's Petition for Declaratory Decree.

2. Plaintiff's Bill or Petition, as amended, for a Declaratory Decree, with each and all of the exhibits attached and pertaining thereto, said exhibits being: Exhibit A, a true, correct, and duly verified copy of Ætna Life Insurance Company Policy No. 425229, with all endorsements and riders thereto and thereon; Exhibit B, a true, correct, and duly verified copy of Ætna Life Insurance Company Policy No. 537284, with all endorsements, and riders thereto and thereon; Exhibit C, a true, correct, and duly verified copy of Ætna Life Insurance Company Policy No. N-760251, with all endorsements and riders thereto and thereon; Exhibit D, a true, correct, and duly verified copy of Ætna Life Insurance Company Policy No. N-808571, with all endorsements and riders thereto and thereon; Exhibit E, a true, correct, and duly verified copy of Ætna Life Insurance Company Policy No. 808572, with all endorsements and riders thereto and thereon; and Exhibit F, a true correct, and duly verified copy of Claim of Benefit under Total Disability Provision, executed by defendant Edwin P. Haworth upon September 30, 1932, with affidavit of Julius Frischer, M. D., of date October 1, 1932.

3. Record entry showing filing of Motion of Defendants to Dismiss Plaintiff's Bill.

4. Motion of Defendants to Dismiss Plaintiff's Bill.

5. Opinion and Order of Court, sustaining Motion of Defendants to Dismiss Plaintiff's Bill, and dismissing the [fols. 92-93] case; Order of Court of August 22, 1935, sustaining Motion of Defendants to Dismiss Plaintiff's Bill, and dismissing the case.

6. Decree of Dismissal.
7. Order of Court granting leave to plaintiff to file a petition for a rehearing.
8. Plaintiff's Petition for Rehearing.
9. Order of Court overruling Plaintiff's Petition for Rehearing.
10. Plaintiff's Petition for Appeal.
11. Plaintiff's Assignment of Errors.
12. Order of Court granting appeal.
13. Citation.
14. Appellant's Cost Bond.
15. Præcipe.
16. Orders extending time for filing transcript of record.

E. R. Morrison, Chas. C. Byers, Solicitors for Plaintiff-Appellant.

The foregoing Præcipe for the transcript of record in the above case is hereby approved by the Appellees, this 8th day of January, 1936.

Rees Turpin, Solicitor for Defendants-Appellees.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 94] Appearances of counsel omitted in printing.

[fol. 95] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

ORDER OF SUBMISSION—May 13, 1936

This cause having been called for hearing in its regular order, the same was argued by Mr. E. R. Morrison for appellant and by Mr. Rees Turpin for appellees.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 96] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, MAY TERM, A. D. 1936

No. 10,562

ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Corporation, Appellant,

vs.

EDWIN P. HAWORTH and CORA M. HAWORTH, Appellee

Appeal from the District Court of the United States for the Western District of Missouri

Mr. E. R. Morrison (Mr. Charles C. Byers and Mr. Douglas Stripp were with him on the brief), for appellant.

Mr. Rees Turpin, for appellee.

Before Stone, Woodrough and Thomas, Circuit Judges

OPINION—July 27, 1936

THOMAS, Circuit Judge, delivered the opinion of the court:

This is a suit in equity for a declaratory judgment under the Declaratory Judgment Act (Judicial Code Sec. 274d, 28 U. S. C. A. 400) by the Ætna Life Insurance Company, insurer, against Edwin P. Haworth, insured, and Cora, his wife, beneficiary, seeking a judgment declaring certain life [fol. 97] insurance policies referred to in the petition null and void. A motion to dismiss was sustained and the appeal is from the order of dismissal. 11 F. Supp. 1016.

The motion to dismiss is in the nature of a demurrer to the petition, challenging the sufficiency of the statement of facts to constitute a cause of action, and the jurisdiction of the court.

The trial court upon entering the order of dismissal from which this appeal is taken, filed a memorandum opinion from which it appears that he held that the petition fails to state a cause of action within the meaning of the Declaratory Judgment Act of June 14, 1934, because it presents no actual controversy in the constitutional sense, and because it does not disclose any present rights or other legal relations to be declared.

Section 2 of Article 3 of the Constitution confines the judicial power of the courts of the United States to "cases"

and "controversies"; and the Act of June 14, 1934, keeps within these constitutional boundaries, because it is applicable only to "cases of actual controversy". Its first section declares:

"(1) In cases of actual controversy the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such."

The question for our determination is whether the facts stated in the petition present an "actual" or justiciable "controversy", in the constitutional sense, between the plaintiff and the defendants.

The petition recites that the plaintiff had previously issued five policies of life insurance upon the life of the defendant, Edwin P. Haworth, in which the defendant, Cora M. Haworth, is named as beneficiary. Each policy contains provisions under which payment of premiums is suspended during total disability of the insured, and two of them provide for certain payments immediately upon proof of total permanent disability.

It is alleged that beginning about 1930 the insured defaulted in the payment of the contractual premiums upon said policies and that such default continues to the present [fol. 98] time; that from time to time since said date the defendants have served upon the plaintiff statements under oath all of similar tenor, one of which is set out. The statement exhibited, after describing the policies and averring the total permanent disability of the insured, continues:

"The insured says that all of the above described policies are now in full force and effect; that under the terms of said policies and each of them all annual premiums upon them, or any of them, becoming payable in the year 1930 or in the year 1931 or in the year 1932 are waived by reason of such disability, and the insured is entitled to have said policies continue in full force and effect without the payment of any further premium so long as his said disability shall continue.

"The insured says this statement is made for the purpose of asserting and claiming his right to have said policies continue under the permanent total disability provision contained in each of them."

No other act or omission of the defendants is alleged.

The plaintiff denies that the insured is now or that he was totally and permanently disabled at or prior to the default in the payment of premiums, and says that all of said policies have lapsed by reason of such default.

It is further alleged that, unless a declaratory judgment is entered herein as prayed, the plaintiff will suffer irreparable injury for the reasons (1) that the defendants have not instituted any action at law or other judicial proceeding wherein the plaintiff would have an opportunity to prove the absence of permanent total disability of the insured and that the policies have lapsed; (2) that actions upon the policies will not be barred until after the running of the statute of limitations following the death of the insured, and that there is danger that evidence to establish such defense now available may not be available at that time; and (3) that because the permanent total disability has not been judicially determined the plaintiff is compelled annually to set aside and maintain substantial reserves upon the policies.

The prayer of the petition is that the court render a declaratory decree or judgment, declaring and defining the status of said policies of life insurance, and declaring each [fol. 99] of them null and void and that each of them has lapsed because of nonpayment of premiums.

It will be noted from an examination of the statement served upon plaintiff that no suit is threatened and no demand made by the defendants. The defendants simply assert that the policies are in force and effect. The apprehension of the plaintiff is that suit will be brought against it at some time prior to the running of the statute of limitations.

Apparently the sole object of this proceeding is to furnish plaintiff an opportunity to establish now its alleged defense to such anticipated litigation, because no claim is made to any contractual rights resulting from the purported wrongful nonpayment of premiums. Assuming that insured has defaulted as alleged, the plaintiff in such case is entitled to only one of two rights. First, it may rely

on the contract and assert its right to damages or to specific performance; or, second, it may cancel or rescind the contract. In the present proceeding it seeks the equivalent of cancellation and makes no claim to the first right. The right of cancellation is one which the plaintiff may exercise itself without asking the aid of the court. The only advantage to be derived from a declaratory judgment is an adjudication of the right of cancellation, and the only value of such an adjudication is that it will be a defense in the event of a future suit on the policies. The only disadvantages alleged to result from the present status are the danger of loss of evidence and the setting aside of reserves.

We are impressed that the situation thus presented by the petition amounts to no more than an "assumed potential invasion" of plaintiff's rights, and that it does not for this reason present a justiciable controversy. Arizona v. California, 283 U. S. 423, 462. The judicial power of the federal courts does not extend to the giving of mere advisory opinions or the determination of abstract propositions. Alabama v. Arizona, 291 U. S. 286, 291; United States v. West Virginia, 295 U. S. 463, 474; New Jersey v. Sargent, 269 U. S. 328, 338. To present an "actual controversy" within the constitutional meaning of that phrase there must be a statement of facts showing that the defendant is acting or is threatening to act in such a way as to invade, or prejudicially affect, the rights of the plaintiff. New Jersey v. Sargent, supra. The Declaratory Judgment Act does not change the essential requisites for the [fol. 100] exercise of judicial power nor alter the character of controversies which are the subject of judicial power under the constitution. Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 325; United States v. West Virginia, 295 U. S. 463, 475.

The Supreme Court has said that a case or controversy may be presented to the federal courts by other than traditional forms of procedure which invoke only the traditional remedies. Nashville, C. & St. L. Ry. v. Wallace, 288 U. S. 249, 265. But the constitutional concept of what constitutes a "controversy" cannot be changed by the legislature nor enlarged by the courts. Where rights are invaded or imminently threatened federal courts have power to give relief by either traditional remedies or by declaratory judgments, because invasion or threatened invasion of rights are

fundamental conditions in the absence of which federal courts have no power to act, since in their absence no justiciable controversy exists. Where these conditions are shown to exist a declaratory judgment may be a salutary remedy. Zenie Bros. v. Miskend (D. C. S. D. N. Y.), 10 F. Supp. 779, 781; see also, Hess v. Country Club Park (Cal.) 2 P. (2d) 782, 783. In the Zenie Bros. case, supra, such relief was granted, the court saying that:

"Under the facts pleaded, the defendants are threatening their (plaintiffs') customers with suits for infringement of a worthless patent and are disrupting their business."

No such situation is presented in the instant case. It is not shown that the business of plaintiff is prejudicially affected in any way by the alleged acts of the defendants. The alleged irreparable injuries to the plaintiff enumerated in the petition, when examined, are found wanting in the essential constitutional ingredients of a controversy. They are too remote and vague to be considered as elements of a cause of action. First, it is claimed that there is danger that evidence to establish the defense of absence of permanent total disability will not be available in the event suit is brought at some future time on the policies; but it is not alleged that this is due to any act or threatened act of defendants. While it is immaterial here, we observe that if the plaintiff desires to preserve such testimony, a method has been provided by statute (Title 28 U. S. C. A. Sec. 644) which is ample and constitutional. Arizona v. California, 292 U. S. 341, 347; Richter v. Union Trust Co., 115 U. S. 55. [fol. 101] Second, the plaintiff insists that it is injured and its rights are prejudicially affected by reason of the fact that it is required annually to set aside substantial reserves for each of the policies in question until it is judicially determined that they have lapsed and are null and void. This claim is without merit for two reasons. First, if it be true that reserves must be set aside as alleged, it is not shown that this is the result of any of the acts attributed to the defendants; and, second, the plaintiff is not thereby deprived of any property right. The funds called reserves continue to be the plaintiff's property, and its control over such funds is neither modified nor affected by the notices served upon it by defendants. The claim of plaintiff in this regard is analagous to the claim asserted by the State of

New Jersey in the Sargent case, supra, and disposed of by the Supreme Court in the following language:

"As respects the State's submerged lands, the bill signally fails to disclose any existing controversy within the range of the judicial power. Stating merely that the State will be deprived of revenue from the leasing of such lands is not enough. Facts must be stated showing that the Act is being or about to be applied in a way which does or will encroach on or prejudicially affect the State's qualified right in the lands."

The same rule was stated with equal emphasis by the Supreme Court in the Ashwander case, supra, wherein it is said:

"The pronouncements policies and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining."

The petition, therefore, fails to state a cause of action under the Declaratory Judgment Act because it fails to state facts disclosing an "actual controversy" in the constitutional sense. It fails in this because the facts averred do not show that any right of the plaintiff is presently being invaded or imminently and prejudicially affected by the alleged acts of the defendants. The judicial power of the federal courts does not extend to such vague and indefinite [fol. 102] questions. Consequently the trial court did not err in dismissing the petition, and the order appealed from must be and it is Affirmed.

DISSENTING OPINION

WOODROUGH, Circuit Judge, dissenting:

The Ætna Insurance Company, of Hartford, Conn., has issued five insurance policies, in the aggregate amount of $30,000.00 upon the life of one Edwin P. Haworth of Kansas City, in each of which the insured's wife, Cora M. Haworth, is named as beneficiary. By the terms of the

policies the insurance company is bound to the performance of certain obligations towards the insured and the beneficiary in case the insured has become wholly, continuously and permanently disabled and will, for life, be unable to perform any work or conduct any business for compensation or profit. One of the policies requires the company, in case of the defined total disability of the insured, to pay the amount of the policy in twenty annual installments, or to pay an annuity according to certain tables. Another policy calls for the payment of an annuity of $50.00 per month, and in the other three it is provided that the company shall waive the further payments of the premiums during the total disability.

The company has made loans upon each of the policies and the loans remain unpaid. Premiums have been defaulted and the company claims that the policies have lapsed and it has cancelled practically all of the insurance. But the insured claims that he became totally disabled within the meaning of the policy during the period when the policies were kept alive by the payment of the premiums. He claims that by reason of his total disability the insurance has not lapsed but is in full force and effect and he has demanded and continues to demand that the company pay him the installments or annuities called for by two of the policies, and that it maintain the other insurance in force without payment of premiums. The insured continues to press his demands upon the company by presenting written statements, affidavits, and demands to it at frequent intervals, but, although the insurance company does and has at all times denied that the insured is or has been totally disabled as defined, the insured has not brought suit of any kind against the company. He has a number of years of [fol. 103] life expectancy and after his death the state statute of limitations allows ten years for suit on the policies.

Accordingly, the insurance company filed its petition in equity against the insured and wife in the proper federal court alleging the foregoing facts (greatly amplified) and seeking to obtain a judicial declaration under the federal declaratory judgment act of June 14, 1934, that four of the policies have lapsed for non-payment of premiums and have become null and void and without force and effect and that under the fifth policy no obligation remains upon the insurance company except to an inconsiderable amount ($45.00)

upon the death of the insured. The defendants moved to dismiss the petition, (1) because no "case" or "controversy" was presented, (2) because there was no equity in the bill, and (3) because assumption of jurisdiction would deny defendants rights under the Seventh Amendment. The District Court sustained the motion and dismissed the petition. The insurance company appeals.

(1) I think the petition presents a "case" or "controversy" justiciable by the courts of the United States under the decision of the Supreme Court in Nashville, etc. Ry. Co. v. Wallace, 288 U. S. 249.

It appeared in that case that tax officers of Tennessee asserted that a certain taxing statute was applicable to the railway company and they demanded payment of the tax in a specified amount and determined to enforce their demand. The railroad company brought suit in the chancery court of Tennessee under the Uniform Declaratory Judgments Act of that state to secure judicial declaration that the tax, as applied to the railway company, was invalid as violative of certain constitutional provisions. Appeal was taken to the Supreme Court of the United States from the decision of the Supreme Court of Tennessee denying the relief prayed by the railway company. In ordering the cause set down for argument the Supreme Court of the United States invited the attention of counsel to the question "whether a case or controversy is presented in view of the nature of the proceedings in the state court". The court stated that if no "case" or "controversy" was presented for decision it was without power to review the decree of the court below. After argument the court concluded that the proceeding was between adverse parties seeking determination of legal rights upon facts alleged in [fol. 104] the bill and admitted by demurrer; that the railway company was not attempting to secure an abstract determination of the validity of a statute or an advisory decision on what the law would be on an uncertain or hypothetical state of facts, but that valuable legal rights asserted by the railway company and threatened with imminent invasion by the state officers would be directly affected to a specific and substantial degree by the decision of the question of law and that the question presented "lends itself to a judicial determination" and is "of the kind which the court traditionally decides". The court recalled that "while

the ordinary course of judicial procedure results in a judgment requiring an award of process or execution to carry it into effect, such relief is not an indispensable adjunct to the exercise of the judicial function." It declared that the Constitution did not crystallize the procedure of 1789 into changeless form and that the court was not precluded from exercising its powers by the mere form of procedure "so long as the case retains the essentials of an adversary proceeding involving a real, not a hypothetical controversy, which is finally determined by the judgment below." The decision of the Supreme Court was that a case was presented which was justiciable in the United States Supreme Court under the federal constitution.

It seems to me that by the same reasoning the petition herein also presents the essentials of an adversary proceeding and involves a real, not a hypothetical controversy and one that may be settled by judicial declaration. The question presented, whether the insured is totally disabled as defined, is one "that lends itself to a judicial determination" and is "of the kind which courts traditionally decide." It is true that the question presented for decision is a question of fact and not a question of law as in the case of Nashville, etc. Ry. Co. v. Wallace, supra, but the declaratory judgment act specifically provides for judicial declaration upon a question of fact as well as upon a question of law. 28 U. S. C. A. 400 (3). The controlling consideration is that "rights" or "other legal relations" can be settled by judicial declaration upon the question, whether the question is one of law or fact.

The controversy here is whether the legal relation of insurer and insured exists between the parties to the suit, together with the attendant rights, duties and privileges. [fol. 105] Such relation did exist for many years and was fully recognized by both parties. Was it terminated by the failure to pay premiums or continued by total disability? The issue is not vague or indefinite. But it is argued that as the insured never has sued the company it may be that neither he nor the beneficiary ever will sue, so that there is no imminent invasion of any legal right of the insurance company by the insured; and, along the same line of thought, it is said that all the insurance company needs to do is to maintain reserves to meet the claims on the policies

if such claims are ever made and established, which, it is said, involves little more than bookkeeping entries that will not substantially affect the company's investments.

There is a sense in which it may be said that the Ætna Company can carry the $30,000.00 of insurance in issue herein for the period of the insured's life expectancy and for years beyond without much overt action other than making some entries in its books of account. In the same sense, it can be said of an automobile manufacturer that his delivering a car or two more or less is a matter of blowing the factory whistle a few minutes sooner or later. Where mass enterprise is concerned, overt effort upon the single unit seems slight. But rightly considered, a life insurance company exists to insure lives and its profit is the excess of income over cost. It will cost the company to insure Haworth for $30,000.00 through the coming years, and, if the allegations of the petition are true, the company will be obliged to incur such cost and such cost will be irreparably lost to the company.

Although it is possible that ultimately the company might never be sued on the policies, the threat appears to me none the less imminent because litigation is being deferred during the lifetime of the insured and perhaps may further be deferred into the period of the statute of limitations. But there is a present, clearly defined claim of right on both sides. The threat to the company's right is imminent in the controlling sense that it is practically certain to materialize in action—being deferred in point of time merely, to the detriment and increased vexation of the company. The insured demands present payment of certain sums and makes present demand that certain insurance be maintained. There is an alleged determination to hold the company to certain obligations—indistinguishable from the alleged determination of the taxing officers in Tennessee to hold the railway company as set forth in the Wallace case. That case is completely controlling.

[fol. 106] In the later case of Ashwander v. T. V. A., 56 S. Ct. 466, the Supreme Court epitomizes its prior decisions applicable to the question of what constitutes a "case" or "controversy" justiciable in the federal courts. (L. C. 472 and 473.) Neither the decision itself nor any of those referred to therein qualify or restrict the doctrine of the

Wallace case. Muskrat v. United States, 219 U. S. 346; Liberty Warehouse Company v. Grannis, 273 U. S. 70; Willing v. Chicago Auditorium Ass'n., 277 U. S. 274; Nashville, etc. Ry. Co. v. Wallace, supra; New Jersey v. Sargent, 269 U. S. 328; New York v. Illinois, 274 U. S. 488; United States v. State of West Virginia, 295 U. S. 463; Arizona v. California, 283 U. S. 423. It is made perfectly clear by the court that "the judicial power does not extend to the determination of abstract questions" and that jurisdiction should not be taken "of issues too vague and ill-defined to admit of judicial determination" and "that claims based upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention". In the Ashwander case the conclusion was that "the plaintiffs (as stockholders) had no right to demand that the directors should start a litigation to obtain a general declaration of the unconstitutionality of the Tennessee Valley Authority Act in all its bearings or a decision of abstract questions as to the right of the stockholder and of the Alabama Power Company in possible contingencies." It seems to me that no purpose to deny jurisdiction in such a case as is here presented can be inferred from the opinion itself or from the cases cited therein.

It was pointed out in the Wallace opinion that a justiciable "case" or "controversy" could be presented without allegations of irreparable injury.

(2) In this case the loss which will be inflicted upon the insurance company by the continuing assertion of his claims by the insured is "irreparable". The company will be obliged by the continuing demands made upon it to treat the policies as contingently in force and so will incur all the cost of maintaining the insurance. If it finally wins a suit on the policies or no suit is ever brought such outlay of expense will be lost.

(3) As the Federal Declaratory Judgment Act fully preserves the right of trial by jury, the motion to dismiss the [fol. 107] bill herein was without merit insofar as it was based on alleged denial of rights under the Seventh Amendment to the Constitution. 28 U. S. C. A. 400 (3).

The decree of the District Court should be reversed.

[fol. 108] In United States Circuit Court of Appeals, Eighth Circuit

No. 10562

Ætna Life Insurance Company of Hartford, Connecticut, a Corporation, Appellant

vs.

Edwin P. Haworth and Cora M. Haworth

Decree—July 27, 1936

Appeal from the District Court of the United States for the Western District of Missouri

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is hereby, affirmed with costs; and that Edwin P. Haworth and Cora M. Haworth have and recover against the Ætna Life Insurance Company of Hartford, Connecticut, a Corporation, the sum of twenty dollars for their costs herein and have execution therefor.

[fol. 109-134] Petition for rehearing, covering 26 pages, filed August 10, 1936, omitted from this print. It was denied, and nothing more by order of August 31, 1936.

[fol. 135] In United States Circuit Court of Appeals

Order Denying Petition for Rehearing—August 31, 1936

The petition for rehearing filed by counsel for appellant in this cause having been considered, It is now here ordered by this Court that the same, be, and it is hereby, denied.

In United States Circuit Court of Appeals

Motion of Appellant for Stay of Issuance of Mandate—Filed September 9, 1936

Comes now the appellant herein and moves the Court to enter an order withholding and staying its mandate herein because it is the bona fide intention of said appellant to make proper application to the Supreme Court of the United States for writ of certiorari herein within the time required by law, and in support hereof appellant attaches the affidavit of its solicitor, Mr. Douglas Stripp, of Kansas City, Missouri.

E. R. Morrison, Chas. C. Byers; Douglas Stripp, Solicitors for Appellant.

[fol. 136] State of Missouri,
County of Jackson, ss:

Douglas Stripp, of lawful age, being first duly sworn upon his oath states that he is one of the solicitors for appellant in the above entitled cause, and that it is the bona fide intention of the appellant to petition the Supreme Court of the United States for a writ of certiorari herein within the time required by law, and that he believes there is merit in said cause and that the judgment of this Court ought to be reviewed and reversed by the Supreme Court of the United States.

Douglas Stripp.

Subscribed and sworn to before me this 8th day of Sept., 1936. Dorothy F. Putthoff, Notary Public in and for Jackson County, Missouri. My commission expires Sept. 22, 1939. (Seal.)

[File endorsement omitted.]

In United States Circuit Court of Appeals

Order Staying Issuance of Mandate—September 9, 1936

Now on this 9th day of September, 1936, comes appellant, by its solicitors, Messrs. E. R. Morrison, Charles C.

Byers and Douglas Stripp, and presents its motion for a [fol. 137] stay of mandate of this Court, pending the filing of and action upon its petition to the Supreme Court of the United States for a writ of certiorari.

On consideration whereof; It is now here ordered that the mandate in this cause be, and the same is hereby stayed until the further order of this Court.

It is further ordered that appellant proceed with diligence and promptly file its petition for a writ of certiorari in the Supreme Court of the United States and, upon the filing of said petition, file in this Court proof of the filing of said petition in said Court.

[fol. 138] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 139] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 16, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40986. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 446. Ætna Life Insurance Company of Hartford, Connecticut, petitioner, vs. Edwin P. Haworth and Cora M. Haworth. Petition for a writ of certiorari and exhibit thereto. Filed October 8, 1936. Term No. 446, O. T., 1936.

FILE COPY

FILED
OCT 8 193
CHARLES ELMORE CR
CL

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 446

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION,
PETITIONER,

vs.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

E. R. MORRISON,
Counsel for Petitioner.

CHAS. C. BYERS,
DOUGLAS STRIPP,
MORRISON, NUGENT, WYLDER & BERGER,
Of Counsel.

E. L. MENDENHALL, INC., 8 WEST 9TH ST., KANSAS CITY, MO.

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Supreme Court of the United States

OCTOBER TERM, 1936.

No. .....

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION,
PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

The Aetna Life Insurance Company of Hartford, Connecticut, prays that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Eighth Circuit entered in the above-entitled case on July 27, 1936.

OPINIONS BELOW.

The District Court opinion (R. 130), written by District Judge Merrill E. Otis, was filed August 22, 1935, and is reported in 11 F. Supp. 1016. The opinion of the Circuit Court of Appeals (R. 145), dissenting opinion (R. 150), is reported in 84 F. (2d) 695.

JURISDICTION.

The decree below was entered July 27, 1936 (R. 155), affirming the decree of the District Court sustaining a motion to dismiss the bill of complaint and dismissing the cause (R. 134); petition for rehearing was denied August 31, 1936 (R. 183). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

This case involves the scope to be given to the Federal Declaratory Judgment Act.

The specific question presented is whether there is an "actual controversy," on which a suit under the Act by a life insurance company against a policyholder may be based, when the policyholder makes a claim to disability benefits consisting of a permanent waiver of premiums and present and future cash payments, without bringing suit, and demands repeatedly that the policies be kept in force by reason of his alleged total disability, whereas the company denies that he is totally disabled

and insists the policies are lapsed for nonpayment of premium.

Stated more generally, the question is whether a party to a contract, charged with liability thereunder and harassed with claims considered unjust, may, as in England, obtain a declaration of his nonliability or privilege (absence of duty), a declaration that the claims are unfounded, and a declaration that, as the petitioner asserts, the contract is no longer in force by reason of defendant's breach and that hence petitioner is free from the obligations claimed against him under the contract.

STATUTE INVOLVED.

The statute involved is the Declaratory Judgment Act, Section 274d of the Judicial Code (49 Stat. 1027, 28 U. S. C. A. 400) which provides that in cases of actual controversy the courts of the United States shall have power, upon appropriate pleading, to declare rights and other legal relations of any interested party petitioning therefor, whether or not further relief is or could be prayed.

STATEMENT.

The petition is somewhat long because of the necessity of setting forth the provisions of the five separate policies involved, but the facts alleged, in so far as petitioner's right to a declaratory judgment is concerned, are few and simple. They are as follows:

At various dates prior to 1930 petitioner issued to respondent, Edwin P. Haworth, five policies of life insurance in the aggregate amount of $40,000.00 (R. 3, 7, 10, 13 and 16). Cora M. Haworth was named as beneficiary in these policies and was, therefore, joined as a defendant in the suit. Each of these five policies contained a provision for benefits in the event of the permanent total disability of the insured. This benefit in three of the policies consisted of a waiver of premiums, the life insurance remaining in force (R. 11, 13 and 16); in one policy, of a waiver of premiums and payment of a monthly income (R. 8); and in the remaining policy, of the payment of the face amount of the policy in twenty annual installments or the payment of a life annuity to the insured in lieu of the death benefit provided in the policy (R. 4). By the terms of the four policies first mentioned the same benefits are payable at death and the same cash and loan values are available, whether the premiums are paid or are waived on account of disability (Exhibit "B," R. 59; Exhibit "C," R. 79; Exhibit "D," R. 99; Exhibit "E," R. 119).

In 1930 and 1931 the respondent, Edwin P. Haworth, ceased paying premiums on four of said policies and made claim for total permanent disability benefits thereunder (R. 9, 12, 14, 17 and 19). He continued to pay premiums on the remaining policy until 1934, after which time he made claim for disability benefits thereunder (R. 6). He has repeatedly renewed his claim to the disability benefits under the several policies and demanded that they be kept in force by reason of the premium waiver provisions (R.

19). The claims have been presented in the form of affidavits of the respondent, entitled "Claim of Benefit Under Total Disability Provision," accompanied by sworn physician's certificates (R. 20 and Exhibit "F," R. 127).

Petitioner denied that Edwin P. Haworth was permanently and totally disabled, and denied that he was entitled to the disability benefits described in the policies (R. 6, 10, 13, 15, 18 and 19). If insured is not disabled, as claimed by petitioner, all of the policies have lapsed for nonpayment of premiums (R. 6, 9, 12, 15 and 17), four of them have no value (R. 9, 12, 15 and 18), and the fifth has a value of only $45.00 extended insurance (R. 6). If Edwin P. Haworth has been totally and permanently disabled as claimed by him, the five policies are in full force and petitioner is now obligated to pay to him the monthly installments of cash disability benefits provided for under two of the policies. In that event, said respondent is further entitled to make claim at any time for the cash surrender values accumulating on said policies by reason of provisions for waiver of premiums, or at his death, Cora M. Haworth, as beneficiary, will be entitled to receive the face of the policies less the loans thereon. If these policies are in force, petitioner is required to carry reserves therefor in excess of $20,000.00, in order to meet its obligations thereunder (R. 22).

Up to the time this suit was brought, on the 19th of October, 1935, neither of the respondents had actually brought any suit to enforce the claims which had then been made by Edwin P. Haworth for more than five years and which he was continuing to make (R. 21). Petitioner, therefore, brought this suit for the purpose of obtaining a

decision as to whether Edwin P. Haworth has been permanently and totally disabled as he claims, and as to whether petitioner is entitled to treat the policies as lapsed and to close its files in regard to them, or must continue them as existing obligations. Petitioner prayed a declaratory decree that the policies are null and void, except for the $45.00 of extended insurance above mentioned (R. 24).

The District Court opinion held in substance: that no "actual controversy" existed because a company against whom a liability was asserted could not maintain a suit for a declaratory judgment in advance of institution of suit by the person who asserts the breach and claims the damage (R. 133); and that there were no "rights" to be declared because the rights referred to in the Act are rights of a petitioning party to some sort of "relief" (R. 133).

The Circuit Court of Appeals (Circuit Judges Stone, Woodrough and Thomas, Judge Thomas writing (R. 145-150), Judge Woodrough dissenting) affirmed the decree, holding that the petition failed to state facts disclosing an actual controversy in the constitutional sense because the facts averred did not show that any right of petitioner was presently being invaded or imminently and prejudicially affected by the acts of respondents (R. 150).

Dissenting (R. 150-155), Judge Woodrough was of the opinion that the threat to the petitioner's right was imminent in the controlling sense that it was practically certain to materialize in action; that there was an alleged determination to hold the petitioner to certain obligations

indistinguishable from the alleged determination of the taxing officers to hold the railway company in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S. 249, and that that case was completely controlling (R. 153); he was also of the opinion that a controversy was presented as to whether the legal relation of insured and insurer existed between the parties, together with the attendant rights, duties and privileges pertaining to such relation (R. 153).

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

(1) In holding that persistent claims of rights to present cash disability benefits and petitioner's denials thereof, do not present an actual controversy.

(2) In holding that persistent demands for maintenance by petitioner of life insurance policies as continuing obligations and petitioner's denials of its duty to do so, do not present an actual controversy.

(3) In holding that irreparable injury must be shown.

(4) In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT.

I.

Conflict with Another Circuit Court of Appeals on Same Matter.

The decision of the Circuit Court of Appeals conflicts with the decision of the Circuit Court of Appeals for the

Fifth Circuit in *Gully* v. *Interstate Natural Gas Co.*, 82 F. (2d) 145 (certiorari denied June 1, 1936, Vol. 80, Sup. Ct. Law Ed., Adv. Op. 967). In that case the plaintiff brought a bill in equity under the Declaratory Judgment Act against the Mississippi State Tax Collector and others, alleging that the latter had determined to make final an assessment on the plaintiff's property, to fix a lien thereon, and to sell plaintiff's property and collect the tax, which the plaintiff alleged was not leviable or collectible because of an applicable exemption, and therefore refused to pay. In the opinion by Hutcheson, Circuit Judge, at page 149, it was said:

> "We think, too, the court was right in the view it took on final hearing, that the supplementary bill for declaratory judgment was properly brought, and that the case was one for such a judgment. For while it may not be doubted that the Federal Declaratory Judgment Act is a purely remedial statute, and does not purport to, nor does it, add to the content of the jurisdiction of the national courts, it certainly does purport, in cases where federal jurisdiction is present, to effect and we think it does, effect thorough-going, remedial changes, by adding to the coercive or warlike remedies in those courts by way of prevention and of reparation, the more pacific and more prophylactic one of a declaration of rights. When, then, an actual controversy exists, of which, if coercive relief could be granted in it the federal courts would have jurisdiction, they may take jurisdiction under this statute, of the controversy to grant the relief of declaration, either before or after the stage of relief by coercion has been reached (citing cases).
>
> "We are aware that the statute has been given a more restrictive cast. *Columbia Nat. Life Ins. Co.* v. *Foulke*, 13 F. Supp. 350 (D. C. W. D. Mo.). We

> are not in accord with this view. We see no reason why the statute should not, we think it should, be given the prophylactic scope to which its language, in the light of its purpose, extends, under it disputants as to whose rights there is actual controversy, may obtain a binding judicial declaration as to them, before damage has actually been suffered, and without having to make the showing of irreparable injury and the law's inadequacy required for the granting of ordinary preventive relief in equity."

In the Foulke case (also decided in the District Court by Judge Otis), a life insurance company brought suit for a declaratory judgment against a beneficiary claiming a death benefit. In the case at bar, claim is being made by respondents for disability benefits. So far as the existence of actual controversy is concerned, it is submitted that there is no substantial difference between the two cases, and the express disapproval of the Foulke case by the Fifth Circuit Court of Appeals clearly shows the irreconcilable conflict between the decision of that court in the Gully case and the decision of the Circuit Court of Appeals in the case at bar. In addition to this, there is a direct conflict between the two decisions as to whether it is necessary to show irreparable injury or the law's inadequacy.

It is true that in the Gully case there is a specific allegation that the defendants had determined to collect the tax, while such specific allegation is lacking in the case at bar. However, the bill in the case at bar alleges frequent, formal and insistent demands for performance and unquestionably reveals a determination ultimately to enforce them by action, particularly when it is noted that the respondents are shown to have ultimately ceased the

payment of premiums before this action was commenced and thus to have irrevocably and exclusively grounded the continuance of this large amount of life insurance in their reliance on their claims for disability benefits. That this does not in principle constitute a distinction, is clearly pointed out by Judge Woodrough in his dissenting opinion where he says that there is an alleged determination to hold petitioner to certain obligations—indistinguishable from the alleged determination of the taxing officers to hold the railway company in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace,* 288 U. S. 249 (R. 154).

The attention of the Court is respectfully directed also to two cases in which life insurance companies brought suits under practically identical facts and in which the respective District Courts rendered decisions directly in conflict with the decision of the Court of Appeals in this case. *Travelers Ins. Co.* v. *Helmer,* 15 F. Supp. 355 (D. C. Ga., May 5, 1936), and *New York Life Ins. Co.* v. *London,* 15 F. Supp. 586 (D. C. Mass., July 3, 1936).

In the Helmer case, Circuit Judge Sibley, sitting in the District Court, said (l. c. 356):

> "The issue there is whether the insured ought to pay, and the insurance company is entitled to collect full premiums in order to maintain the policies in being. Both parties are interested in knowing their rights in this respect. The status of these policies is important to both to be determined. The remedy by declaratory judgment seems to be of ideal application to such a case."

II.

Conflict with Applicable Decisions of This Court.

The decision of the Circuit Court of Appeals is contrary to the opinion of this Court in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S. 249. Its facts were practically identical to those in the *Gully Case, supra*, decided in the Fifth Circuit Court of Appeals, *i. e.*, the plaintiff railway company sought a judgment under the Tennessee declaratory judgment act for the determination of a controversy arising from the defendant taxing official's assertion that a tax was payable by the plaintiff, the payment of which he demanded and threatened to enforce despite the plaintiff's denial of liability and refusal of payment. In deciding that the case presented a justiciable controversy, this Court pointed out that the Tennessee act conferred jurisdiction on Tennessee courts "to declare rights * * * whether or not further relief is or could be claimed," and said in the opinion by Mr. Justice Stone, at page 262:

> "The relief sought is a definitive adjudication of the disputed constitutional right of the appointment, in the circumstances alleged, to be free from the tax, * * *. Obviously the appellant, whose duty to pay the tax will be determined by the decision of this case, is not attempting to secure an abstract determination by the Court of the validity of a statute, * * * or a decision advising what the law would be on an uncertain or hypothetical state of facts. * * *."

The dissenting opinion of Judge Woodrough in the case at bar clearly states the conflict between the majority opinion in the Circuit Court of Appeals and the decision of

this Court in the Wallace case. Judge Woodrough says (R. 151):

> "I think the petition presents a 'case' or 'controversy' justiciable by the courts of the United States under the decision of the Supreme Court in *Nashville, etc., Ry. Co.* v. *Wallace*, 288 U. S. 249."
>
> . . . . . .
>
> (R. 153) "But there is a present, clearly-defined claim of right on both sides. The threat to the company's right is imminent in the controlling sense that it is practically certain to materialize in action—being deferred in point of time merely, to the detriment and increased vexation of the company. The insured demands present payment of certain sums and makes present demand that certain insurance be maintained. There is an alleged determination to hold the company to certain obligations—indistinguishable from the alleged determination of the taxing officers in Tennessee to hold the railway company as set forth in the Wallace case. That case is completely controlling."

There is a further conflict with the Wallace case on the question of the necessity of alleging irreparable injury. The Circuit Court of Appeals says (R. 149):

> "It is not shown that the business of plaintiff is prejudicially affected in any way by the alleged acts of the defendants. The alleged irreparable injuries to the plaintiff enumerated in the petition, when examined, are found wanting in the essential constitutional ingredients of a controversy."

In the Wallace case, this Court said, at page 264:

> "As the prayer for relief by injunction is not a necessary prerequisite to the exercise of judicial power, allegations of threatened irreparable injury which are material only if an injunction is asked,

may likewise be dispensed with if, in other respects, the controversy presented is, as in this case, real and substantial."

The decision of the Circuit Court of Appeals is also in conflict with this Court's decision in *Fidelity National Bank & Trust Co.* v. *Swope,* 274 U. S. 123, l. c. 131, where it was held that the issues in a previous suit brought by the city under the provisions of its charter, to determine the validity of an ordinance authorizing public works and the validity of proposed liens upon the lands of benefited property owners, constituted a justiciable controversy, just as they would if raised and determined in a suit for injunction brought by a taxpayer, and that they could not be deemed any the less so because through a modified procedure the parties were reversed and the same issues were raised and finally determined at the behest of the city. On the facts in the case at bar, respondents could have maintained a suit under conventional equity practice for a decree setting aside petitioner's cancellation of the policies and declaring them in force as existing obligations (*Missouri Cattle Loan Co.* v. *Great Southern Life Ins. Co.,* 330 Mo. 988, l. c. 999, 52 S. W. (2d) 1; *Davis* v. *New York Life Ins. Co.,* 47 F. (2d) 1051, l. c. 1055; 6 Couch Cyc. of Ins. Law, Sec. 1429, and cases cited). Such a suit would raise the same issues as in the case at bar, the only difference being the reversal of the parties. Yet, the Circuit Court of Appeals in effect holds that such a reversal of the parties deprives this case of the necessary elements of actual controversy and thus it conflicts with the decision of this Court in the Swope case.

III.

Need for Direct Supreme Court Decision of an Important Question of Federal Law.

The Circuit Court of Appeals has decided an important question of federal law which has not been directly decided by this Court but should be settled by it. The scope to be given the Act is without doubt an important question of federal law. The Act is comparatively new and has never received an authoritative construction by this Court.(1) Even in a narrow aspect the case involves the right of life insurance companies to have a determination whether policies must be maintained in force without the payment of premiums, which is a matter of great importance both to the companies and to the policyholders. It was said by this Court in the case of *New York Life Ins. Co.* v. *Statham*, 93 U. S. 24, l. c. 30-31, that unless forfeiture for nonpayment of premiums were enforceable, the business of a life insurance company "would be thrown into utter confusion"; that the insured parties have an associated relation in a great scheme, whether the company be a mutual one or not; that each is interested in the engagements of all, "for out of the coexistence of many risks arises the law of average, which underlies the whole business."

In its broader aspect, the case involves the question of the right of a party to any contract, who would normally be a defendant under older forms of legal procedure, to ask for a judicial declaration under the Act of his

(1) In Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 325, the Act was briefly discussed but its provisions were not elucidated.

privileges or absence of duty and of his immunities as to matters which are in actual dispute, where the party who would normally be plaintiff, in the absence of the statute, has taken no action but made harassing demands and claims.

And this case likewise involves the broad question as to whether the Act is to be given a construction which will carry out the intent of Congress to permit the determination of "rights and *other legal relations*" (Section 1), *i. e.*, not only "rights" in the narrow sense, but privileges, powers, immunities, duties, liabilities and disabilities of the parties to a written contract, and give it a scope identical with that prevailing under English Order XXV, Rule 5 (Borchard, Declaratory Judgments, 74, 80, 25), from which the Federal Declaratory Judgment Act was taken, or whether it is to be hedged about with limitations which will defeat the language of the statute and destroy its effective use as an instrument for the speedy, inexpensive and efficient settlement of controversies at their inception.

The importance of the question involved is shown by the numerous reported federal decisions in cases brought and constantly being brought under the Act. Great conflict and confusion is shown in these decisions, as to both the meaning of the Act and the application of the principles stated by this Court in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S. 249. While petitioner believes that the decision in the Wallace case is controlling here, the Circuit Court of Appeals has reached an opposite conclusion.

The Circuit Court of Appeals denies the right of petitioner to obtain a declaratory decree that life insurance policies have lapsed for nonpayment of premiums. As stated above, exactly the contrary result has been reached in the case of *Travelers Insurance Co.* v. *Helmer*, 15 F. Supp. 355 (D. C. Ga., May 5, 1936), and in *New York Life Ins. Co.* v. *London*, 15 F. Supp. 586 (D. C. Mass., July 3, 1936). In both the Helmer and London cases the insured claimed the benefit of provisions for waiver of premiums on account of disability. In both cases the courts decided that suits for declaratory judgment were maintainable by the life insurance companies. In the London case the Court specifically refused to follow the decision of Judge Otis in the District Court in this case (l. c. 590), and in part approved (l. c. 588) and in part disapproved (l. c. 590) the language of the same District Judge in the Foulke case. The opinion in the London case reviews a number of decisions which have been rendered under the Act and the Court's discussion well illustrates the existing conflict in these decisions.

In *Ohio Casualty Insurance Co.* v. *Plummer*, 13 F. Supp. 169 (D. C. Tex.), and in *Commercial Casualty Co.* v. *Humphrey*, 13 F. Supp. 174 (D. C. Tex.), the Court construed the Act, in harmony with the Gully case and contrary to the decision in this case, as authorizing an action by an automobile liability insurer against its insured and various persons having damage claims against him to determine the company's obligations under its policy.

In *Lionel Corp.* v. *De Filippis*, 11 F. Supp. 712 (D. C. N. Y.), the Court upheld a suit under the Act as proper

to determine that the plaintiff was not infringing defendant's patents as the defendant had claimed. Of similar effect is *Zenie Bros.* v. *Miskend,* 10 F. Supp. 779 (D. C. N. Y.). Yet, in *New Discoveries, Inc.,* v. *Wisconsin Alumni Research Foundation,* 13 F. Supp. 596 (D. C. Wis.), a motion to dismiss a similar action was sustained for lack of actual controversy.

The weight of authority under the many state declaratory judgment acts (and under English practice), the provisions of which are essentially similar to the federal Act, permits the rendering of declaratory judgments in cases similar to the one at bar. See *Utica Mutual Ins. Co.* v. *Glennie,* 132 Misc. 899, 230 N. Y. S. 673; *Post* v. *Metropolitan Casualty Ins. Co.,* 227 App. Div. 156, 237 N. Y. S. 64; *American Motorists' Ins. Co.* v. *Central Garage,* 86 N. H. 362, 169 Atl. 121; *J. Sullivan & Sons Mfg. Co.* v. *Ideal Bldg. & Loan Assn.,* 313 Pa. 407, 170 Atl. 263; *Owen* v. *Fletcher Savings & Trust Bldg. Co.,* 99 Ind. App. 365, 189 N. E. 173; *Tolle* v. *Struve,* 124 Cal. App. 263, 12 Pac. (2d) 61; *Woodward* v. *Fox West Coast Theaters,* 36 Ariz. 251, 284 Pac. 350; *Carolina Power & Light Co.* v. *Iseley,* 203 N. C. 811, 167 S. E. 56; *Guaranty Trust Co. of New York* v. *Hannay & Co.,* (C. A.) 2 K. B. 536.

From this it is clear that the decision of the Circuit Court of Appeals in the case at bar rather than clarifying this confusion, has only added to it, that litigants and counsel, both, are of necessity utterly confounded when seeking to employ the procedural reform intended to be accomplished by the Act, and that this undesirable situation should be clarified by this Court in the public

interest. An authoritative decision of the question presented by this case would settle the confusion since it covers the questions upon which the various courts are in conflict in the cases so far decided under the Act and under similar state acts.

It may be added that in determining the question of fact whether the insured Haworth is or is not totally and permanently disabled, the central issue of this case, his right to a jury trial is fully preserved by the Declaratory Judgment Act.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued, directed to the said United States Circuit Court of Appeals for the Eighth Circuit, commanding that court to certify and send to this Court for its determination, on a day certain to be therein named, a full and complete transcript of the record and of the proceedings of said Circuit Court of Appeals had in the case numbered and entitled on its docket as 10562, *Aetna Life Insurance Company of Hartford, Connecticut, a Corporation, Appellant,* v. *Edwin P. Haworth and Cora M. Haworth, Appellees,* to the end that this cause may be reviewed and determined by this Court as provided for in the statutes of the United States; and that the decree herein of the said Circuit Court of Appeals be reversed by this Honorable Court, and for such further relief as to this Court may seem proper.

Aetna Life Insurance Company of Hartford, Connecticut, a Corporation,

By E. R. Morrison,
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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 446.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION,
PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

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PETITIONER'S REPLY TO RESPONDENTS' BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

There can be but one way to determine whether there is a conflict between decisions rendered by different courts and that is by examining the opinions and ascertaining the specific points decided in each case. The decision of the Circuit Court of Appeals in this case is not based on the point which respondents now raise, the gist of which is that a decision in this cause in favor of the respondents would be only a determination of present existence of disability and that there might be future litigation as to whether the disability continued.

The argument of respondents, therefore, resolves itself into the contention that the Circuit Court of Appeals might have decided this case (although it did not do so) upon a ground which was not involved in the decisions with respect to which conflict is claimed. We do not understand that any such rule of law obtains in determining whether a writ of certiorari should issue. Such a theory would completely destroy one of the principal purposes of the issuance of the writ by this Court, for the result would be to leave unresolved the conflict of decisions with respect to matters actually decided.

But if it should be deemed pertinent to examine the merits of this argument at this time, then we submit that the contention that a judgment rendered in this cause would lack essential elements of finality is unsound. If the issues are determined in favor of the petitioner, there will be a final adjudication that the policies have lapsed for non-payment of premiums and that would terminate the controversy for all time. If the issues are determined in favor of respondents, then there will be a final adjudication of every issue that could be determined if suit had been filed by the insured to recover accrued monthly cash benefits, or if a conventional suit in equity had been filed by the insured to set aside the cancellation of the policies by petitioner.

In other words, a judgment rendered in this cause would have every element of finality that it would have had if the parties were reversed and we can conceive of no better test of this question.

It is obvious that no Court would refuse to entertain a suit by the insured for monthly disability ben-

efits simply because the right to such benefits in the future might terminate upon recovery from disability.

Every suit brought under conventional procedure involving adjudication of present rights under a contract of a continuing nature presents the possibility that, if there should be a future breach, then there might be future litigation. But this affords no ground for denying present relief.

No better illustration of this principle can be found than is shown by the well settled rule that a policyholder is entitled to maintain a suit against a life insurance company to set aside the cancellation of a policy and to have a decree that the policy is still in force. The authorities upholding this principle are cited in the petition at page 13. In such a case the only matter adjudicated is the present existence of the policy and, to maintain it in force as a continuing obligation, the policyholder must comply with the obligations, or conditions, of the policy with respect to the payment, or waiver, of premiums.

A final judgment rendered in this case would not be merely a determination of fact as to disability. It would be a final determination of rights and liabilities arising from, and determinable by, a finding as to whether or not disability existed. The Declaratory Judgment Act would have little, if any, value if issues of fact were not determinable in cases brought thereunder. The Act shows on its face that it was clearly intended that issues of fact could be, and should be, decided in suits brought thereunder because it contains a specific provision for trial of such question by jury.

The contention that a decision in favor of the respondents would not entitle the insured to a present judgment against the insurance company is, we submit, completely erroneous. The insured could, in his answer, ask for judgment for monthly cash benefits which have already accrued. Or, if he fails to assert his claim in his answer, he could proceed summarily on notice to obtain such relief under paragraph (2) of the Act. In addition thereto, he would have a final judgment that his policies are still in force. And such a decree would also be a final adjudication that he has, and has the right to receive upon demand, accumulated cash surrender values and dividend additions under his policies to the same extent as though these premiums had been paid in cash by him at the times provided in the policy.

Respectfully submitted,

Aetna Life Insurance Company of Hartford, Connecticut, a Corporation,

By E. R. Morrison,

Counsel for Petitioner.

Chas. C. Byers,
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BRIEF FOR PETITIONER.

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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 446.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION, PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

OPINIONS BELOW.

The District Court opinion (R. 81), written by District Judge Merrill E. Otis, was filed August 22, 1935, and is reported in 11 Fed. Supp. 1016. The opinion of the Circuit Court of Appeals (R. 94) and dissenting opinion (R. 99) are reported in 84 F. (2d) 695 and 698, respectively.

JURISDICTION.

The decree below was entered July 27, 1936 (R. 105), affirming the decree of the District Court sustaining a motion to dismiss the bill of complaint and dismissing the cause (R. 85); petition for rehearing was denied August 31, 1936 (R. 105). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1935, and writ of certiorari was granted herein November 16, 1936 (R. 107).

QUESTION PRESENTED.

This case involves the scope to be given to the federal Declaratory Judgment Act.

The specific question presented is whether there is an "actual controversy," on which a suit under the Act by a life insurance company against a policyholder may be based, when the policyholder makes a claim to disability benefits consisting of a permanent waiver of premiums and present and future cash payments, without bringing suit, and demands repeatedly that the policies be kept in force by reason of his alleged total disability, whereas the company denies that he is totally disabled and insists the policies are lapsed for nonpayment of premium.

Stated more generally, the question is whether a party to a contract, charged with liability thereunder and harassed with claims considered unjust, may, as in England, obtain a declaration of his nonliability or

privilege (absence of duty), a declaration that the claims are unfounded, and a declaration that, as the petitioner asserts, the contract is no longer in force by reason of defendant's breach and that hence petitioner is free from the obligations claimed against him under the contract.

STATUTE INVOLVED.

The statute involved is the Declaratory Judgment Act, Section 274d of the Judicial Code (49 Stat. 1027, 28 U. S. C. A. 400) which provides that in cases of actual controversy the courts of the United States shall have power, upon appropriate pleading, to declare rights and other legal relations of any interested party petitioning therefor, whether or not further relief is or could be prayed.[1]

---

[1]The full text of the Declaratory Judgment Act is as follows:

(1) In cases of actual controversy except with respect to federal taxes the courts of the United States shall have power upon petition, declaration, complaint or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

STATEMENT OF THE CASE.

The petition for declaratory judgment is somewhat long because of the necessity of setting forth the provisions of the five separate policies involved, but the facts alleged, in so far as petitioner's right to a declaratory judgment is concerned, are few and simple. They are as follows:

At various dates prior to 1930 petitioner issued to respondent, Edwin P. Haworth, five policies of life insurance in the aggregate amount of $40,000.00 (R. 2, 7, 10, 13, 16). Cora M. Haworth was named as beneficiary in these policies and was, therefore, joined as defendant in the suit. Each of these five policies contained a provision for benefits in the event of the permanent total disability of the insured. This benefit in three of the policies consisted of a waiver of premiums, the life insurance remaining in force (R. 11, 14, 17); in one policy, of a waiver of premiums and payment of a monthly income (R. 8); and in the remaining policy, of the payment of the face amount of the policy in twenty annual instalments or the payment of a life annuity to the insured in lieu of the death benefit provided in the policy (R. 3). By the terms of the four policies first mentioned the same benefits are payable at death and the same cash and loan values are available, whether the premiums are paid or are waived on account of disability (Exhibit "B," R. 43; Exhibit "C," R. 53; Exhibit "D," R. 63; Exhibit "E," R. 73).

In 1930 and 1931 the respondent, Edwin P. Haworth, ceased paying premiums on four of these policies and

made claim for total permanent disability benefits thereunder (R. 9, 12, 15, 18, 19, 20). He continued to pay premiums on the remaining policy (the one in which the disability benefit was in lieu of the death benefit) until 1934, after which time he made claim for disability benefits under it (R. 5, 6). He has repeatedly renewed his claim to the disability benefits under the several policies and demanded that they be kept in force by reason of the premium waiver provisions (R. 19, 20). These claims have been presented in the form of affidavits of the respondent, entitled "Claim of Benefit Under Total Disability Provision," accompanied by sworn physician's certificates (R. 21 and Exhibit "F," R. 77). Such claims having been continued up to November 24th, 1934 (R. 20), this suit was filed by petitioner on January 5th, 1935 (R. 1). And even after institution of this suit these claims were reasserted on April 16th, 1935 (R. 20).

Petitioner denied that Edwin P. Haworth was permanently and totally disabled, and denied that he was entitled to the disability benefits described in the policies (R. 6, 10, 13, 16, 19, 20). If, as claimed by petitioner, the policyholder is not disabled, all of the policies have lapsed for nonpayment of premiums (R. 5, 9, 12, 15, 18), four of them have no value (R. 9, 12, 15, 18), and the fifth has a value of only $45.00 extended insurance (R. 6). If the policyholder has been totally and permanently disabled, as claimed by him, the five policies are in full force (R. 6, 10, 13, 15, 19) and petitioner is now obliged to pay to him the accrued instalments of cash disability benefits provided for under two of the policies (R. 6, 10). In that event, said respondent is

further entitled to make claim at any time for the cash surrender values accumulating on said policies by reason of provisions for waiver of premiums, or at his death, Cora M. Haworth, as beneficiary, will be entitled to receive the face of the policies less the loans thereon. If these policies are in force, petitioner is required to carry reserves therefor in excess of $20,000.00, in order to meet its obligations thereunder (R. 23).

Up to the time this suit was brought, on the 5th of January, 1935, neither of the respondents had actually brought any suit to enforce their claims (R. 21). Petitioner, therefore, brought this suit for the purpose of obtaining a decision as to whether Edwin P. Haworth has been permanently and totally disabled as he claims, and as to whether petitioner is entitled to treat the policies as lapsed and to close its files in regard to them, or must continue them as existing obligations and pay to insured the income benefit provided for under two of the policies. Petitioner prayed a declaratory decree that the policies are null and void, except for the $45.00 of extended insurance above mentioned (R. 25).

The District Court opinion held in substance that no "actual controversy" existed because a company against whom a liability was asserted could not maintain a suit for a declaratory judgment in advance of institution of suit by the person who asserts the breach and claims the damage (R. 84); and that there were no "rights" to be declared because the rights referred to in the act are rights of a petitioning party to some sort of "relief" (R. 84).

The Circuit Court of Appeals (Circuit Judges Stone, Woodrough and Thomas, Judge Thomas writing (R. 94-99), Judge Woodrough dissenting) affirmed the decree, holding that the petition failed to state facts disclosing an actual controversy in the constitutional sense because the facts averred did not show that any right of petitioner was presently being invaded or imminently and prejudicially affected by the acts of respondents (R. 99).

Judge Woodrough was of the opinion (R. 99-104), that the threat to the petitioner's right was imminent in the controlling sense that it was practically certain to materialize in action; that there was an alleged determination to hold the petitioner to certain obligations indistinguishable from the alleged determination of the taxing officers to hold the railway company in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S. 249, and that that case was completely controlling (R. 103); he was also of the opinion that a controversy was presented as to whether the legal relation of insured and insurer existed between the parties, together with the attendant rights, duties and privileges pertaining to such relation (R. 102).

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

(1) In holding that persistent claims of rights to present cash disability benefits and petitioner's denials thereof, do not present an actual controversy.

(2) In holding that persistent demands for maintenance by petitioner of life insurance policies as con-

tinuing obligations and petitioner's denials of its duty to do so, do not present an actual controversy.

(3) In holding that irreparable injury must be shown.

(4) In affirming the judgment of the District Court.

OUTLINE OF ARGUMENT.

I. The federal Declaratory Judgment Act is constitutional.

II. The three elements of jurisdiction required by the Act exist in this case:

A. There is an actual controversy within the meaning of the Declaratory Judgment Act and the federal constitution.

1. The allegations of the petition for declaratory judgment disclose an actual controversy as defined by this Court and other federal courts.

2. The allegations of the petition disclose a situation which would enable the policyholder to maintain an action against the petitioner.

3. A party who would normally be defendant under other forms of procedure may seek a declaration under the Act.

4. The suit is not prematurely brought.

5. The declaration sought will be a final determination of the existing controversy.

B. The allegations of the petition for declaratory judgment disclose rights and other legal relations which are properly the subject of judicial declaration.

C. Petitioner is an interested party.

III. Irreparable injury need not be alleged, but is alleged and exists in this case.

ARGUMENT.

I.

The Declaratory Judgment Act Is Constitutional.

Both of the courts below held the Declaratory Judgment Act constitutional (R. 83 and 95). That it is so appears to be incontrovertibly settled by the cases of *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, and *Nashville, etc. Railway Co.* v. *Wallace*, 288 U. S. 249. Petitioner, therefore, does not extend its argument on this point.

The bringing of this suit does not deprive respondents of a jury trial on the factual issue of total disability of the policyholder. The Act makes express provision for submission of a question of fact to the jury.

II.

The Three Elements of Jurisdiction Required by the Act Exist in This Case.

Section 1 of the Declaratory Judgment Act requires that there be an actual controversy and empowers the courts of the United States in cases of actual controversy to declare rights and other legal relations of any interested party petitioning for such declaration. This part of petitioner's argument will, therefore, be devoted to a showing that in this case an actual controversy exists,

that there are rights and other legal relations which are properly the subject of a declaration, and that petitioner is an interested party. Under the first of these divisions the argument will be subdivided into the five headings hereinabove set out under the "Outline of Argument."

A. THERE IS AN ACTUAL CONTROVERSY WITHIN THE MEANING OF THE DECLARATORY JUDGMENT ACT AND THE FEDERAL CONSTITUTION.

1. The allegations of the petition for declaratory judgment disclose an actual controversy as defined by this Court and other federal courts.

The allegations of the petition show there is a controversy of a definite, specific and substantial character. The claims of the policyholder have been clearly and repeatedly asserted in writing and petitioner's denials of these claims have been equally specific and consistent. The respective rights of the parties depend upon a determination of a single clear-cut issue, namely, whether the disability required by the policy provisions existed at the time payment of premiums ceased. The right of the petitioner to treat the policies as lapsed became complete when premium payments ceased if the requisite disability of the insured did not then exist. On the other hand, the right of the insured to disability benefits and the maintenance of the policies in force during the continuance of disability then became complete if such disability did exist. As has already been stated, a jury verdict may be had on this question of fact in the present proceeding. The controversy is ripe for decision.

This is not an attempt to obtain a decision advising what the law would be on an uncertain or hypothetical

state of facts, as was held to be the case in *Liberty Warehouse Co.* v. *Grannis,* 273 U. S. 70.

The claims of the insured are not mere expressions of opinion in private conversation, as was the case in *Willing* v. *Chicago Auditorium Association,* 277 U. S. 274, 288, nor indefinite and unspecific as in *New Jersey* v. *Sargent,* 269 U. S. 328. On the contrary, they are couched in formal language, attested before a notary public, and accompanied by a sworn physician's certificate (Exhibit "F," R. 77). At frequent intervals and at least thirteen times, beginning in 1930 (R. 19, 20), these claims have been reasserted in similar form (R. 21).

The present suit is similar in its essential characteristics to the case of *Nashville, C. & St. L. R. Co.* v. *Wallace,* 288 U. S. 249. In that case the taxing authorities had evidenced a determination to enforce their demand for the payment of certain taxes. Suit was brought under similar provisions of the declaratory judgment act of the State of Tennessee, claiming that the imposition of the tax violated the federal constitution. After a full review of the authorities, this Court held that suit presented a case or controversy within the provisions of Article III, Section 2 of the constitution. It was held that the constitution does not require that a case or controversy should be presented by traditional forms of procedure invoking only traditional remedies, and it was said in the opinion by Mr. Justice Stone, at page 264:

> "Hence, changes merely in the form or method of procedure by which federal rights are brought to final adjudication in the state courts are not enough

to preclude review of the adjudication by this Court, so long as the case retains the essentials of an adversary proceeding, involving a real, not a hypothetical controversy, which is finally determined by the judgment below."

In *Gully* v. *Interstate Natural Gas Co.*, 82 F. (2d) 145 (certiorari denied June 1, 1936), the Circuit Court of Appeals for the Fifth Circuit sustained a decree under the federal Declaratory Judgment Act upon a state of facts similar in all respects to those in the *Wallace Case* except that nonliability for the tax sought to be imposed was claimed under statutory exemptions. In affirming the judgment of the trial court, the court said in the opinion by Hutcheson, Circuit Judge, at page 149:

"We think, too, the court was right in the view it took on final hearing, that the supplementary bill for declaratory judgment was properly brought, and that the case was one for such a judgment. For while it may not be doubted that the Federal Declaratory Judgment Act is a purely remedial statute, and does not purport to, nor does it, add to the content of the jurisdiction of the national courts, it certainly does purport in cases where federal jurisdiction is present, to effect and we think it does, effect thoroughgoing, remedial changes, by adding to the coercive or warlike remedies in those courts by way of prevention and of reparation, the more pacific and more prophylactic one of a declaration of rights. When, then, an actual controversy exists, of which, if coercive relief could be granted in it the federal courts would have jurisdiction, they may take jurisdiction under this statute, of the controversy to grant the relief of declaration, either before or after the stage of relief by coercion has been reached. Borchard's Declaratory Judgments, pp. 619-621; *Nashville, C. & St. L. R. Co.* v. *Wallace*, 288 U. S.

249, 53 S. Ct. 345, 77 L. Ed. 730, 87 A. L. R. 1191; *United States* v. *West Virginia,* 295 U. S. 463, 55 S. Ct. 789, 79 L. Ed. 1546; *Mississippi Power & Light Co.* v. *City of Jackson,* (D. C.) 9 F. Supp. 564; *Putnam* v. *Ickes,* 64 App. D. C. 339, 78 F. (2d) 223; *Automotive Equipment* v. *Trico Products Corp.,* (D. C.) 10 F. Supp. 736; *Hary* v. *United Electric Coal Co.,* (D. C.) 8 F. Supp. 655; *Black* v. *Little,* (D. C.) 8 F. Supp. 867; *Ohio Casualty Co.* v. *Plummer,* (D. C. S. D. of Tex.) 13 F. Supp. 169; *American Motorists' Ins. Co.* v. *Central Garage,* 86 N. H. 362, 169 A. 121; *Penn et al.* v. *Glenn,* (D. C.) 10 F. Supp. 483; *Post* v. *Metropolitan Cas. Ins. Co.,* 227 App. Div. 156, 237 N. Y. S. 64, affirmed 254 N. Y. 541, 173 N. E. 857; *Holly Sugar Corp.* v. *Fitzler,* 42 Wyo. 446, 296 P. 206."

In *Travelers Ins. Co.* v. *Helmer,* 15 F. Supp. 355 (D. C. Ga.), the court had before it a bill of complaint seeking a declaratory judgment under the Act as to the status of two policies of life insurance which contained provisions for waiver of premium in event of disability. In that case, as here, the insured claimed that the requisite disability existed and this claim was denied by the insurance company. In upholding the right of the insurance company to obtain a declaratory judgment, it is said in the opinion by Circuit Judge Sibley, at page 356:

> "The issue there is whether the insured ought to pay, and the insurance company is entitled to collect full premiums in order to maintain the policies in being. Both parties are interested in knowing their rights in this respect. The status of these policies is important to both to be determined. The remedy by declaratory judgment seems to be of ideal application to such a case."

In *New York Life Ins. Co.* v. *London*, 15 F. Supp. 586 (D. C. Mass.), the plaintiff brought suit praying for a declaratory judgment under the federal Act to determine a controversy as to the existence of disability of the insured under four policies which provided for payment of monthly disability benefits and waiver of premiums. In that case the insurance company had for a time paid monthly disability benefits but had discontinued payments on account of claimed termination of the disability. In the opinion by District Judge Brewster, it was said at page 589:

> "I am aware that there is language in the Foulke Case that conflicts with these views, and the same court, in *Aetna Life Ins. Co. of Hartford, Conn.*, v. *Haworth*, 11 Fed. Supp. 1016, held that an insurance company, insuring against total disability, could not petition for a declaration as to the rights and obligations of the insurance company under the policy. It is apparent that the court overlooked the fact that if the insured were disabled, as he contended, his claim for disability payments had matured, and also, the further fact that upon the extent of insured's disability depended the rights of the insurance company to premiums.
>
> "The mere fact that the declaration in respect of these rights would also determine the obligations of the plaintiff does not, in my opinion, oust the court of jurisdiction. The case presents all the elements required by the act necessary to confer authority.
>
> "It is my opinion that if the existence of a contract from which spring rights and obligations is in controversy between the parties to it, the court is empowered by the act to declare whether there are any legal relations and what those relations are. Whether the policies of insurance, upon which plain-

tiff asserts rights, are or are not in force must necessarily present a controversy upon which a declaration may properly be sought.

"The suggestion that the controversy is one of fact is not sufficient to defeat the plaintiff's petition. See 49 Harvard Law Review, p. 1351."

That there is here presented a controversy in the constitutional sense is shown as clearly by the reasoning in those cases where a controversy was held not to exist (such as *New Jersey* v. *Sargent*, 269 U. S. 328; *Willing* v. *Chicago Auditorium Association*, 277 U. S. 274; *Muskrat* v. *U. S.*, 219 U. S. 346), as by the cases hereinabove cited in which the existence of a controversy has been upheld.

2. The allegations of the petition disclose a situation which would enable the policyholder to maintain an action against the petitioner.

There can be no question but that the policyholder had a right at the time the case at bar was instituted to bring suit against the petitioner both for accrued disability benefits and to have the policies adjudged to be still in force. The right of a policyholder to maintain a suit in equity to set aside the asserted cancellation of a life insurance policy and to declare it to be in force and effect, is clearly established, *Burnet* v. *Wells*, 289 U. S. 670, 680. In Missouri, the right to such relief has been upheld, *Missouri Cattle Loan Co.* v. *Great Southern Life Ins. Co.*, 330 Mo. 988, 52 S. W. (2d) 1. See, also, *Cohen* v. *New York Life Ins. Co.*, 50 N. Y. 610; *Davis* v. *New York Life Ins. Co.*, 47 F. (2d) 1051, l. c. 1055; 6 Couch Cyc. of Insurance Law, Sec. 1429, and cases cited. In

passing, it might be pointed out that in the *Cohen Case* (which was cited in *Fidelity National Bank & Trust Co.* v. *Swope,* 274 U. S. 123, 132) the court said that:

> "It is fit and proper that both parties to the contract should know their rights."

It needs no citation of authorities to show that the insured's right to sue for accrued cash disability benefits was also complete at the time the present suit was started.

Since the allegations of the petition disclose a state of facts which, without the slightest doubt, would be held to constitute an actual controversy if the policyholder sued, the question is then presented as to whether it is any the less an actual controversy when brought before the court by the party against whom the claim is asserted. This question almost appears to answer itself, but the next section of this brief will be devoted to a consideration of it.

3. A party who would normally be defendant under other forms of procedure may seek a declaration under the Act.

In the *Wallace Case* the court cites and follows the earlier case of *Fidelity National Bank & Trust Co.* v. *Swope,* 274 U. S. 123. In that case, a previous suit had been brought by Kansas City, under authority of a provision in the city charter, against Swope and the other property owners affected, to determine the validity of the liens for benefit assessments to be made under an ordinance providing for certain street improvements. In the prior proceeding the liens were held to be valid.

The question for determination was whether this judgment was *res judicata* as a "case" or "controversy" under the constitution. In the opinion by Mr. Justice Stone, the court said, at page 131:

> "Under this procedure, the judgment to be awarded finally determines, subject to appeal, the validity of the ordinance authorizing the improvement, the limits of the benefit district, the method of apportioning benefits, and the validity of the proposed liens. That the issues thus raised and judicially determined would constitute a case or controversy if raised and determined in a suit brought by the taxpayer to enjoin further proceedings under the ordinance could not fairly be questioned. Compare *Risty* v. *Chicago, R. I. & P. R. Co.*, 270 U. S. 378, 70 L. Ed. 641, 46 Sup. Ct. Rep. 236. *They cannot be deemed any the less so because through a modified procedure the parties are reversed and the same issues are raised and finally determined at the behest of the city*" (italics ours).

This decision is clearly and directly applicable to the situation in the case at bar. Since the right of the insured to maintain an action against the company is clear, then under the express holding in the *Stcope Case* the issues raised in this petition cannot be deemed any the less a controversy in the constitutional sense, because through a modified procedure the parties are reversed and the same issues are raised and may be finally determined at the behest of the petitioner.

In the cases of *Travelers* v. *Helmer*, 15 F. Supp. 355, and *New York Life Insurance Co.* v. *London*, 15 F. Supp. 586, the similarity of which to the case at bar has already been pointed out, it was held that the insurance

company plaintiffs, who would normally be defendants under other forms of procedure, were entitled to maintain their actions for declaratory judgments.

There are other decisions by the federal district courts holding that suits may be brought under the Act by the party to the controversy who would normally otherwise be the defendant. This right has been upheld in cases brought by an automobile liability insurer to determine liability for claims made against the insured by injured persons, *Ohio Casualty Ins. Co.* v. *Plummer*, 13 F. Supp. 169 (D. C. Tex.), and *Commercial Casualty Co.* v. *Humphrey*, 13 F. Supp. 174 (D. C. Tex.); to determine the plaintiff's rights with respect to obligations asserted against plaintiff by the defendant government officials under the Agricultural Adjustment Act, *Black* v. *Little*, 8 F. Supp. 867 (D. C. Mich.); to determine whether plaintiff was infringing patents as defendant claimed, *Lionel Corp.* v. *De Filippis*, 11 F. Supp. 712 (D. C. N. Y.); *Zenie Bros.* v. *Miskend*, 10 F. Supp. 779 (D. C. N. Y.); to determine whether plaintiff was liable in damages for the discharge of an employe prior to expiration of employment contract, *McKesson & Robbins, Inc.*, v. *Charsky*, 15 F. Supp. 209 (D. C. Col.). The last-cited case was brought under a state act.

Like holdings have been made in numerous cases under state declaratory judgment acts. Such right has been upheld (for example) in cases brought to determine—

Whether a policy of liability insurance was in force as to a particular accident as the insured defendant contended, *American Motorists Ins. Co.* v. *Central Garage*, 86 N. H. 362, 169 Atl. 121; whether plaintiff lessee of

defendant's premises was obligated by the lease to pay that part of defendant's income tax arising from the rental income, as demanded by defendant, *Owen* v. *Fletcher Savings & Trust Bldg. Co.*, 99 Ind. App. 365, 189 N. E. 173; the rights of the parties to a lease under a renewal clause therein, *Pulsifer* v. *Walker*, 85 N. H. 434, 159 Atl. 426; whether certain real estate subdivision restrictions were no longer enforceable as against plaintiff's property, *Hess* v. *Country Club Park*, 213 Cal. 613, 2 Pac. (2d) 782; whether plaintiff was obligated under the terms of a lease as contended by defendant lessor, *Tolle* v. *Struve*, 124 Cal. App. 263, 12 Pac. (2d) 61; insurer's liability to undertake the defense of a damage suit for its insured and to pay damages that might be awarded therein as contended by the insured and persons suing him for injuries, *Utica Mutual Ins. Co.* v. *Glennie*, 132 Misc. Rep. 899, 230 N. Y. Supp. 673; the validity of a lease of property to the plaintiff by a city whose right to make the lease had been questioned by objecting taxpayers, *Woodward* v. *Fox West Coast Theaters*, 36 Ariz. 251, 284 Pac. 350.

Like relief has often been granted in England. A review of authorities so holding is found in the opinion of Lord Justice Pickford in the leading case of *Guaranty Trust Co. of New York* v. *Hannay & Co.*, (C. A.) 2 K. B. 536, 555 (1915). In that case a suit was filed by Guaranty Trust Co. to determine whether it was liable under claim asserted by Hannay & Co. upon which claim a suit had been previously instituted in New York.

This question is exhaustively discussed in Borchard's Declaratory Judgments, page 16 *et seq.*, and page 310.

A state court case which has been frequently cited in this country is *Faulkner* v. *City of Keene*, 85 N. H. 147, 155, 155 Atl. 195, 200, where, in the opinion by Peaslee, C. J., it is said:

> "It was long doubted in England whether the proceeding could be maintained by one seeking a negative decree. But it is now settled that it is available there to one asking that a right asserted against him be declared invalid. *Guaranty Trust Co.* v. *Hannay*, (1915) 2 K. B. 536.
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> * * * * * * * *
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> "Its effect is simply to * * * enable the normal defendant to institute the proceedings. It makes no difference whether the claim be in positive or negative form, or whether it involves issues of fact. If the controversy be one that would be justiciable under the law, provided either party had violated the right claimed by the other, it is justiciable under the act as soon as the essential facts arise. Claim of legal or equitable right on the one hand and its denial on behalf of an adverse interest constitute a cause for proceeding for a declaratory judgment."

In the University of Chicago Law Review for December, 1936, Vol. 4, Number 1, Mr. Edwin Borchard, Professor of Law at Yale University and coauthor of the federal Declaratory Judgment Act, has an article on "Justiciability," in which he comments at some length on the opinions of the courts below in the case at bar. Practically all of this article by Mr. Borchard is germane to the questions involved in the case at bar, and petitioner respectfully directs the attention of the court to the entire article. The following quotations appearing on pages 11 and 12 of the Law Review apply to the

particular point now under discussion. Referring to the instant case, Mr. Borchard says:

> "Judge Otis in the United States District Court concluded, astonishingly, that there was not an 'actual controversy,' and dismissed the petition. * * * The judge seemed not to understand that a party charged may institute an action against the claimant, for a judgment that there is no duty as claimed; and to accommodate his dislike of this supposedly novel form of proceeding, the precedents for which are abundant, he relied on the cliche' that there was 'no actual controversy.'
>
> * * * * * * *
>
> "In the Haworth case the company asserted immunity and privilege from the unfounded claims of the insured. Again, the Circuit Court of Appeals, like Judge Otis, were worried by the apparent novelty of a party charged, the obligor, instituting an action against the claimant, the obligee, for a declaration of the invalidity of the claim and of release from the cloud thereby created. It is unfortunate that the court apparently had no time to examine the history of this form of proceeding or to appreciate its English and American antecedents, otherwise they could hardly have reached so intolerable and unsustainable a conclusion, which for want of historical background, had to be clothed in the strange suggestion that the issue presented no 'actual controversy.'"

4. The suit is not prematurely brought.

Petitioner's argument down to this point has attempted to show that the facts alleged in the petition for declaratory judgment disclose an actual controversy as that term has been defined by this Court and other courts, that on the facts alleged the policyholder could without doubt have maintained an action against peti-

tioner, and that there is overwhelming authority both in the decisions of this Court and in many other decisions to show that, under declaratory judgment procedure, the reversal of the positions which the parties would ordinarily occupy is immaterial. Petitioner might here close its argument on the "actual controversy" point. However, respondents have suggested in the courts below, and there is some implication in the opinions below, that an actual controversy does not exist because the petition does not allege that respondents had brought suit to enforce the claims made by the policyholder, or that they were threatening to bring such a suit immediately. Petitioner submits that this argument is unsound.

In the report of the senate committee on the judiciary, accompanying the bill to amend the Judicial Code by adding a new section to be numbered 274D (Report No. 1005, 73d Congress, 2d Session, May 10, 1934; Borchard, Declaratory Judgments, p. 634) it is said:

> "The 1,200 American decisions have established that the proceeding must be adversary, or interested parties must be cited, the issue must be real, the question practical and not academic, and the decision must finally settle and determine the controversy."

In this statement of the elements required for rendering a declaratory judgment, it is not indicated that there must be either a pending suit or a threat of immediate suit by the parties against whom the declaration is sought. If the 1,200 American decisions to which the committee referred had made any such requirement, it is unlikely that the committee would have overlooked it in its statement. The cases do not make such a requirement.

One of the primary purposes of declaratory judgment procedure is to provide means for the prompt settlement of controversies. This objective would not be attained if a party asserting a claim could prevent his adversary from instituting an action by the simple expedient of not stating when he proposed to file suit to enforce the claim asserted.[2]

As was said by the trial court in its opinion in this case (R. 81):

> "The plaintiff desires to have judicially determined now the question whether the insured was wholly and permanently disabled on June 1, 1934. If that question can be decided now and is decided adversely to the insured's contention, the liability of the plaintiff definitely and finally will be limited to the ultimate payment of $45.00. An alternative is that at the death of the insured (and that may be twenty years hence) the beneficiary will sue on the policy."

(In mentioning the date June 1, 1934, the trial judge evidently had in mind only one of the policies. Premium payments on the others had ceased some years earlier.)

If the opposing party were about to institute litigation which would determine the controversy, the necessity for seeking a declaratory judgment would be greatly lessened. Hence, intention of the opposite party to postpone litigation should be an added reason for entertaining jurisdiction under the act rather than a ground for denying relief.

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[2]In Missouri, the statute of limitations as applied to a suit on a life insurance policy is ten (10) years. Liebing v. Mutual Life Insurance Co., 269 Mo. 509, 191 S. W. 250.

Petitioner is entitled to prompt and efficient relief and should not be compelled to wait until such time as its adversaries choose to bring suit. *Bank* v. *Stone*, (C. C. Ky.) 88 F. 383, 391, opinion by Judge Taft with whom sat Mr. Justice Harlan and Judge Lurton; *Mutual Life Insurance Co.* v. *Pearson*, 114 F. 295 (C. C. Mass.); *Lincoln National Life Ins. Co.* v. *Hammer*, 41 F. (2d) 12 (8th C. C. A.).

In this connection the language of the court in the case of *Tolle* v. *Struve*, 124 Cal. App. 263, 12 Pac. (2d) 61, 64, is pertinent. It was there said:

> "It was a defect of the judicial procedure which developed under the common law that the doors of the courts were invitingly opened to a plaintiff whose legal rights had already been violated, but were rigidly closed upon a party who did not wish to violate the rights of another nor to have his own rights violated * * *."

If the contention of the respondents is sound, then an easy way has been found for still keeping the doors of the courts closed to a party who has no cause of action except under the traditional forms recognized by the rules of equity and the common law.

In a leading case, *Petition of Kariher*, 284 Pa. 455, 463, 131 Atl. 265, 268, it was said by Chief Justice Moschzisker that, in order to obtain a declaratory judgment, "no wrong need be immediately threatened."

The repeated, formal assertions of claim by the policyholder in the case at bar are far more conclusive as showing a determination to enforce these claims by court action than would be a mere threat to sue. The

policyholder has ceased the payment of premiums and has staked all of his rights upon the assertion of disability. It is inconceivable that the acts of the policyholder alleged in the petition could be viewed in any other light than as preliminary steps for establishment of his rights and those of the beneficiary by legal action. Litigation is none the less inevitable although deferred for the time being.[3]

Permitting a party against whom a claim is asserted to sue for a declaration of his nonliability, and if such claim is on a written contract, for a declaration that the contract is no longer in force, upon a showing only of the conditions set forth in the Senate report, will not be an undue encouragement to litigation, for the very practical reason that the party against whom the claim is asserted generally has nothing to gain by litigation and everything to lose. He will not start court action unless he is reasonably certain that court action will sooner or later be started against him. Obviously, petitioner in this case would not have started suit if it

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[3]On this point, it is said by Judge Woodrough, in his dissenting opinion (R. 103), 84 F. (2d) 700:

> "Although it is possible that ultimately the company might never be sued on the policies, the threat appears to me none the less imminent because litigation is being deferred during the lifetime of the insured and perhaps may further be deferred into the period of the statute of limitations. But there is a present, clearly defined claim of right on both sides. The threat to the company's right is imminent in the controlling sense that it is practically certain to materialize in action; being deferred in point of time merely, to the detriment and increased vexation of the company. The insured demands present payment of certain sums and makes present demand that certain insurance be maintained. There is an alleged determination to hold the company to certain obligations, indistinguishable from the alleged determination of the taxing officers in Tennessee to hold the railway company as set forth in the Wallace case. That case is completely controlling."

had had any idea that the claims of respondents would be dropped. Petitioner's object in starting suit was to obtain a decision now, during the lifetime of the policy-holder, on a question which it felt would inevitably result in future litigation and on which it felt it was entitled to know where it stood. The conditions stated by the Senate committee as having been established by the 1,200 American decisions have been met in this case. The imposition of additional conditions would tend to surround the application of the act with technicalities and impede the remedial effect which the committee report shows the act was intended to have.

5. A decision in this suit will be a final determination of the controversy.

It needs no argument to show that judgment on the question of disability in the present suit in favor of petitioner would be a final determination of the rights and liabilities of the parties.

Respondents argued in their brief opposing issuance of writ of certiorari that if a declaratory judgment were rendered herein which established the disability of the insured, "he would not be entitled to a present judgment against the insurance company," and that "it would not determine finally his right to a judgment in a future action."

If judgment on the question of disability should be rendered in favor of respondents, the case of *Fidelity National Bank & Trust Co.* v. *Swope,* 274 U. S. 123, definitely establishes the fact that such judgment would be *res judicata* and would finally determine that the policies

are in full force and effect up to the time suit was brought. On the basis of this finding of disability the policyholder would also be entitled to a judgment for all disability benefits accrued. Under the express provisions of the Act summary relief may be granted against any adverse party, on application and notice, based on the declaratory judgment rendered.

A declaratory judgment in favor of the policyholder would also determine his rights to all the benefits of the disability clause in the future, unless it could be shown that his disability had subsequently terminated or that, after the rendition of such judgment, he had failed to comply with some requirement of the policies necessary to enforce his rights to future benefits. But the fact that rights which might subsequently accrue cannot be determined in this suit is no ground for refusing to determine present rights asserted in the form of a justiciable controversy. Such subsequent rights constitute entirely separate and distinct causes of action. This is the uniform holding of the courts. *Pittsburg C. C. & S. L. Ry. Co.* v. *Keokuk & H. Bridge Co.*, (C. C. A. 7th) 107 F. 781, 787, and cases cited; *Breakwater Co.* v. *Donovan*, (C. C. A. 6th) 218 Fed. 341, 343; *Brooke* v. *Yarbrough*, (C. C. A. 10th), 37 F. (2d) 527, 530.

Furthermore, as to policy No. 425229 (Ex. A, R. 30) the adjudication of disability would be final and could not be again litigated, for this policy provides that upon proof of permanent and total disability a full settlement will be made, which upon the election of the insured will either be upon the basis of annual payments of one-twentieth of the sum insured plus dividend additions, or

an annuity for the lifetime of the insured, upon proof only that at the time of each annuity payment the insured be then living (R. 3).

The cases cited in the brief of respondents above referred to are not in anywise applicable to a situation of this character. They simply lay down the rule that the judgment must finally dispose of the then existing controversy. This is well illustrated by the case of *Lewis* v. *Greene,* L. R. (1905), 2 Ch. Div. 340, chiefly relied on by respondents, in which it was sought to have determined a question of law as to the rights of the plaintiff without a determination of the issues of fact upon which the decision of the case would ultimately turn. That action was not brought under Order XXV, Rule 5, providing for declaratory judgments in general, but was brought under Order LIV-A, which provides solely for the construction of a written instrument.

As further showing that this argument is without merit it is obvious that the present controversy is final and complete for the reason that the insured could at this time upon the basis of the issues raised in this petition, maintain an action in which, upon establishing disability, he could recover final judgment for all monthly disability payments which have now accrued, and an adjudication that these policies are in full force and effect. The fact that the respondents could obtain a final judgment in their favor on the cause of action disclosed in the petition for a declaratory judgment would seem to be conclusive proof that a declaratory judgment rendered under the petition would possess all the essential elements of finality.

This same contention was made by respondents in the Circuit Court of Appeals, but that court was evidently not impressed by the argument for the point is not even referred to in either the majority or minority opinions.

B. THE ALLEGATIONS OF THE PETITION FOR DECLARATORY JUDGMENT DISCLOSE RIGHTS AND OTHER LEGAL RELATIONS WHICH ARE PROPERLY THE SUBJECT OF JUDICIAL DECLARATION.

The petition for declaratory judgment (R. 25) prays for a declaration of the status of the insurance policies, asking that four of the policies be declared to be null and void and that the obligation of the plaintiff upon the fifth policy be declared to consist solely in the duty to pay the sum of $45.00 upon the death of the policyholder. It further asks that the rights and other legal relations of all interested parties be declared, and prays the granting of such further relief as the exigencies of the case may require and as may seem meet and proper to the court.

The right to be free from an unfounded claim, or to know whether a claim is well founded, and the right to treat a contract as ended, may well be considered rights within the meaning of the act. It is said in 54 C. J. 808:

> "A right, in a legal sense, exists when, in consequence of given facts, the law declares that one person is entitled to enforce against another a claim, *or to resist the enforcement of a claim urged by another*" (italics ours).

But the Act does not limit declarations to declarations of rights. It provides for a declaration of "rights

and *other* legal relations." Rights must have been considered legal relations by the Congress, else the word "other" would not have been included. If a right is a legal relation then the corresponding obligation must necessarily be a legal relation. Therefore, whether or not petitioner has rights to be declared, it is entitled to come into court, as it has done, and ask for a declaration as to its obligations.

There is ample authority for the proposition that a declaration of immunity from asserted claims, a declaration that the plaintiff is not obligated as claimed by defendants, is a proper declaration under the act. The report of the Senate committee, to which reference has already been made (Report No. 1005, 73d Congress, 2d Session, May 10, 1934; Borchard, Declaratory Judgments, p. 630), contains the following statement:

> "The limitations and condition upon the rendering of such judgment are well stated in the case of *Braman* v. *Babcock* (98 Conn. 549, 120 Atl. 150, 1923), in which it was held that the Connecticut Act, which closely resembles the proposed federal act, authorizes—'the superior court to render final judgments as to the existence or nonexistence of any right, power, privilege, or immunity, or of any facts upon which the existence or nonexistence of such right, power, privilege, or immunity may depend . . .'"

Clearly the declaration sought in this case comes within the language approved by the Senate committee.

The right to seek a declaration as to nonliability has been recognized by this Court in *Nashville, etc., Ry. Co.* v. *Wallace,* 288 U. S. 249. There, as here, in a proceed-

ing for declaratory judgment the plaintiff was denying and the defendant was asserting a claim and demand against the plaintiff. In this respect, as in others, the *Wallace Case* is, as stated by Judge Woodrough in his dissenting opinion (R. 103), "completely controlling." The same principle was affirmed in *Gully* v. *Interstate Gas Company,* 82 F. (2d) 145.

The same principle has been recognized by the English courts, *Guaranty Trust Co.* v. *Hannay & Co.,* (C. A.) 2 K. B. 536 (1915); *Societe Maritime & Commercial* v. *Venus Steam Shipping Co.,* 9 Comm. Cas. 289 (1904). In each of these leading cases it was held that the plaintiff was entitled to ask for a declaration that it was not obligated as claimed by the defendant.

The same principle is recognized by the leading text-writer on declaratory judgments. In Borchard's Declaratory Judgments, pages 74 *et seq.,* it is shown that a freedom or immunity from claim is embraced in the phrase "rights and other legal relations." We have already quoted in this brief the statement made by Mr. Borchard on page 12 of the Chicago Law Review for December, 1936, in which he calls the conclusion of the Circuit Court of Appeals, that a party charged could not seek a declaration of the invalidity of the claim and of release from the cloud thereby created, intolerable and unsustainable.

However, petitioner's claim that there are rights and other legal relations disclosed by the petition which are properly the subject of a declaration, does not need to be based entirely upon the proposition that immunity from obligation comes within that phrase of the act.

Petitioner is asking for a declaration that certain insurance policies be declared void. The petition alleges (R. 3-10, 19-20) that claim is made under these policies for certain cash benefits as well as the waiver of premiums. If it is determined that the policyholder has been totally disabled as claimed by him, then the relationship of insured and insurer exists between him and petitioner, and the relationship of creditor and debtor also exists because of the obligation which would thus be imposed on petitioner to pay the disability income benefits now due. If a declaration is granted as prayed by petitioner, then neither of these relationships exists between it and the policyholder. It is submitted that these are legal relations even within the definition laid down by the District Court for the Western District of Missouri in the case of *Columbian National Life Insurance Co. v. Foulke,* 13 F. Supp. 350, 352, which court appears to be alone in the narrow interpretation given by it to the phrase "rights and other legal relations."

C. PETITIONER IS AN INTERESTED PARTY.

It is so obvious that petitioner has a direct pecuniary interest in the matters as to which a declaration is sought in this case, that this section of the argument is included more for the sake of symmetry than for the sake of necessity. Petitioner has an interest in knowing whether it is an insurer of the life of Edwin P. Haworth in excess of the forty-five dollars of extended insurance which it admits. It is interested in knowing whether it is a debtor of Edwin P. Haworth to the extent of the accrued income disability benefits claimed by him. It is interested in

knowing whether it can close its claim file and be relieved from the continued expense and annoyance of the repeated claims for disability benefits made as alleged in the petition. It is interested in knowing whether it must continue to keep set aside the reserves stated in the petition (R. 23) to meet the obligation which may exist at the death of Edwin P. Haworth, or whether no such obligation exists and therefore no reserves need be set up to meet it.

In an action brought by the policyholder against the company based upon the facts set out in the petition for declaratory judgment in this case, it could not be questioned that this petitioner was an interested party. Accordingly, under the holding of this court in *Fidelity Bank* v. *Swope*, 274 U. S. 123, and the numerous other cases already cited in this brief to the effect that reversal of the ordinary positions of the parties does not affect jurisdiction under the Act, petitioner is an interested party within the meaning of the Act. An action brought by the policyholder would involve a determination of the same issues, in whole or in part, which petitioner seeks to have determined in this suit. Petitioner's interest in the determination of those issues is the same whether it sues or is sued.

Petitioner is clearly an interested party within the definition formulated by the court in the case of *Patterson's Executor* v. *Patterson*, 144 Va. 113, 120, 131 S. E. 217, 219, where the court said:

> "The act contemplates that the parties to the proceeding shall be adversely interested in the matter as to which the declaratory judgment is sought,

and their relation thereto such that a judgment or decree will operate as *res adjudicata* as to them."

See, also, Borchard's Declaratory Judgments, p. 36.

III.

Irreparable Injury Need Not Be Alleged, But Is Alleged and Exists in This Case.

It is not necessary to the maintenance of a suit for a declaratory judgment that actual or threatened irreparable damage be shown as in the case of a suit for injunction. This was expressly held in *Railway Co.* v. *Wallace* (288 U. S. 249, 264), and *Gully* v. *Interstate Natural Gas Co.* (82 F. (2d) 145, 149), and, in effect, was held in *Fidelity National Bank & Trust Co.* v. *Swope* (274 U. S. 123). Of course, the controversy must involve rights of a substantial nature, either from the standpoint of monetary value, or from the standpoint of those personal prerogatives and immunities which are held to be the traditional subjects of judicial protection or enforcement.

Valuable rights of each party of a type which have been traditionally held proper subjects of judicial determination are involved in this action.

The principle contended for is recognized in the case of *New Jersey* v. *Sargent*, 269 U. S. 328, 339, where, in discussing the question of jurisdiction to determine a controversy, it was said in the opinion by Mr. Justice Van Devanter:

"* * * But whether they are thus invalid cannot be made the subject of judicial inquiry until

they are given or about to be given some practical application and effect. Naturally this will be after they become part of an accepted license, and after some right, privilege, immunity or duty asserted under them becomes the subject of actual controversy."

Rights, privileges, immunities and duties of a definite and specific character are, in this case, asserted by the respective parties.

It is true that in the *Sargent Case,* in treating of the further subject of the state's rights in submerged lands, it was said that facts must be stated showing that the statute is being, or about to be, applied in a way which does, or will, encroach on, or prejudicially affect the state's rights in the lands. But, it should be borne in mind that this was a suit for an injunction. An injury, or threatened injury, is essential to the maintenance of an injunction suit. But it does not follow, and we do not believe that this Court intended to say, that actual or threatened injury to, or encroachment upon, rights is essential to the existence of a controversy in the constitutional sense in every case. This is clearly demonstrated by the decision in the later case of *Fidelity National Bank* v. *Swope,* 274 U. S. 123, where encroachment upon, or invasion of, rights was neither shown nor threatened. The language used in the *Sargent Case* is appropriate only to actions involving controversies of that type and was used by the Court as showing the necessity for some act which would "serve both to define the controversy and to establish its existence in the

judicial sense" (Cf. *United States* v. *West Virginia*, 295 U. S. 463, 474).

In the *Wallace Case* (288 U. S. 249, 264), it was said:

> "As the prayer for relief by injunction is not a necessary prerequisite to the exercise of judicial power, allegations of threatened irreparable injury which are material only if an injunction is asked may likewise be dispensed with if, in other respects the controversy presented is, as in this case, real and substantial. Such was the purport and effect of our decision in *Fidelity National Bank & T. Co.* v. *Swope*, 274 U. S. 123, 71 L. Ed. 959, 47 S. Ct. 511, *supra*, where it was held that a final judgment rendered by a state court in an adversary proceeding brought under a state statute to determine the validity of liens about to be imposed for benefits assessed under a city improvement ordinance, presented a case within the appellate jurisdiction of this court. Accordingly, we must consider the constitutional questions raised by the appeal."

It is not necessary to comment on the case of *Fidelity National Bank & Trust Co.* v. *Swope*, inasmuch as the court, in the above quotation, has stated that that decision was to the same effect.

In the *Gully Case*, 82 F. (2d) 145, 149, the same holding is made by the Fifth Circuit Court of Appeals where it is said that the court thought that under the language of the Act:

> * * * "disputants as to whose rights there is actual controversy, may obtain a binding judicial declaration as to them, before damage has actually been suffered, and without having to make the show-

ing of irreparable injury and the law's inadequacy required for the granting of ordinary preventive relief in equity."

In fact, however, the rights of the petitioner are prejudicially affected. The petition alleges that by reason of there being no judicial determination of the rights of the insured, the plaintiff is required annually to set aside substantial reserves for each of the policies in question until it is judicially determined that they have lapsed and are null and void (R. 23, 24). The setting aside of these reserves constitutes more than a bookkeeping entry (R. 103), and we submit that the Court of Appeals was in error in holding that the company's "control over such funds is neither modified nor affected" (R. 98) by the notices served upon petitioner by the respondents.

The status of insurance reserves was considered by this Court in the case of *Maryland Casualty Co.* v. *United States*, 251 U. S. 342, 350. In the opinion by Mr. Justice Clarke, it was there said:

> "The term 'reserve' or 'reserves' has a special meaning in the law of insurance. While its scope varies under different laws, in general it means a sum of money, variously computed or estimated, which, with accretions from interest, is set aside, 'reserved,' as a fund with which to mature or liquidate, either by payment or reinsurance with other companies, future unaccrued and contingent claims, and claims accrued, but contingent and indefinite as to amount or time of payment."

Again, at page 353, it was said that:

> "* * * such deductions can be restored to income again only where it is clearly shown that subsequent business conditions have released the amount of them *to the free beneficial use of the company in a real, and not in a mere bookkeeping, sense*" (italics ours).

So long as these reserves are required to be set up by the company, they constitute in a very real sense both a segregation of assets and a liability of the company.

The collection of premiums on outstanding life insurance policies is the most vital function involved in the conduct of life insurance. It is only from these premiums, and the interest accruing from their investment, that the business of the company can be carried on and death and disability benefits paid. Hence, not only the company but all of its policyholders are interested in seeing that premiums are promptly collected on all outstanding policies, and that in all cases of defaulted premiums the policies shall be promptly forfeited or cancelled. All matters affecting the rights and interests of the policyholders directly affect the business of the company.

These principles are clearly set forth in the opinion written by Mr. Justice Bradley, in the case of *New York Life Ins. Co.* v. *Statham*, 93 U. S. 24, 29, where it was said:

> "But whilst this is true, it must be conceded that promptness of payment is essential in the busi-

ness of life insurance. All the calculations of the insurance company are based on the hypothesis of prompt payments. They not only calculate on the receipt of the premiums when due, but on compounding interest upon them. It is on this basis that they are enabled to offer assurance at the favorable rates they do. Forfeiture for nonpayment is a necessary means of protecting themselves from embarrassment. Unless it were enforceable, the business would be thrown into utter confusion. It is like the forfeiture of shares in mining enterprises, and all other hazardous undertakings. There must be power to cut off unprofitable members, or the success of the whole scheme is endangered. The insured parties are associates in a great scheme. This associated relation exists whether the company be a mutual one or not. Each is interested in the engagements of all; for out of the coexistence of many risks arises the law of average, which underlies the whole business."

Again it is said at page 32:

> "The business of insurance is founded on the law of averages; that of life insurance eminently so. The average rate of mortality is the basis on which it rests. By spreading their risks over a large number of cases, the companies calculate on this average with reasonable certainty and safety. Anything that interferes with it deranges the security of the business."

To remove this burden a suit of this character is particularly appropriate because the beneficiary can thus be made a party and her interests bound by the judgment rendered. The extent to which the beneficiary would be bound by a judgment rendered in a suit which might be brought by the insured alone is at least questionable. *Brown* v. *Pacific Mutual Life Ins. Co.*, 62 F. (2d) 711

(C. C. A. 4th); *New York Life Ins. Co.* v. *Halpern,* (D. C.) 47 F. (2d) 935; *Mutual Life Ins. Co.* v. *Strochmann,* (D. C.) 6 F. Supp. 953. It is, therefore, to the interest of all parties that this issue be settled in an authoritative way.

There are other and very definite reasons why a denial of the relief prayed for and the resulting delay in the determination of this controversy would be injurious to petitioner. By Section 5929, Rev. Stat. Missouri, 1929, an insurer may be subjected to a penalty of 10% of the claim and the payment of opposing party's attorney's fee for vexatious delay in claimed payment. This added liability is ordinarily held to be a question for the jury. *Gueringer* v. *Fidelity & Deposit Co.,* 184 S. W. 936. If suit should be brought for accumulated disability benefits and petitioner should be held liable therefor, it would be compelled to pay interest at the rate of 6% per annum from the date that the respective payments were due under the provisions of Section 2839, Rev. Stat. Missouri, 1929. If petitioner is liable for these benefits, it is ready to pay them now and should not incur the added obligation of interest and be exposed to payment of interest and penalties by reason of being given no opportunity to have its liability determined with reasonable promptness.

It is unconscionable that the respondents should have the right to hold this claim "as a menace and threat over the head of the complainant," while in the meantime, evidence may become "lost or unavailable." *Schmidt* v. *West,* 104 F. 272 (C. C. Ind.). Relief in equity has often been granted to avoid postponement of litiga-

tion to a "time when the facts are no longer capable of complete proof or have become involved in the obscurities of time" (Story, Eq. Juris., Sec. 705).

Conclusion.

The scope of the Declaratory Judgment Act will be established by this Court's decision in this case. By that decision it will take its place as an improvement in our judicial procedure for which it was intended, or it will become a mere, unimportant form of relief, available merely in the alternative, to parties already possessed of a traditional remedy. The decisions of this Court in the *Swope* and *Wallace Cases* and of the Fifth Circuit Court of Appeals in the *Gully Case*, are authorities, both in letter and in spirit, for an interpretation of the Act which will permit the accomplishment of its intended purpose to afford a procedure for the prompt and efficient judicial determination of the rights and relations of parties, which are the subject of actual dispute.

We respectfully submit that the decision of the Circuit Court of Appeals should be reversed and the cause remanded for trial.

Aetna Life Insurance Company
of Hartford Connecticut, a
Corporation,

By E. R. Morrison,
of Kansas City, Missouri,
Counsel for Petitioner.

Berkeley Cox,
of Hartford, Connecticut,
Chas. C. Byers,
Douglas Stripp,
Morrison, Nugent, Wylder & Berger,
of Kansas City, Missouri,
Of Counsel.

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No. 446

In the Supreme Court
of the
United States

OCTOBER TERM, 1936.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION, PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

REES TURPIN,
Solicitor for Respondents.

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VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

The petitioner seeks a review on writ of certiorari of the decision of the United States Circuit Court of Appeals for the Eighth Circuit on the grounds that the decision in this cause is in conflict with another Circuit Court of Appeals and with applicable decisions of this court.

We respectfully submit that a correct understanding of the decision will demonstrate not only that it is not in conflict with the decisions of this and other courts, but, on the contrary, is in accord with the decisions of this court and that no grounds are presented for granting the writ.

ARGUMENT.

The cardinal defect of the petition for the writ is that not one of the cases cited by the petitioner as being in conflict involves the application of the declaratory judgment statute to the facts disclosed by the record in this case. Nothing decided by any other court of appeals or by this court would, if applied to the facts of this case, lead to any conclusion different from that reached by the Circuit Court of Appeals for the Eighth Circuit in the opinion and decision attacked by the petition here.

The decision here is so clearly stated in the opinion of Judge Thomas that rather than to attempt to construe it for this court we refer you to it with the belief it will interpret itself as you read it. It is found on pages 145 to 150 of the record.

We respectfully submit that the interpretation of the Declaratory Judgment Act contended for by appellant, the petitioner here, is not only broader than that intended and one which the language of the act will not support, but is broader than that given to it in any of the cases cited by petitioner. If the law should be construed as the appellant asks the courts to construe it, the procedure and practice in the federal courts would be revolutionized in a manner neither intended nor foreseen by the congress. Cases that lawyers have always thought were triable as actions at law would so amazingly be converted into suits in equity that there would be little of the old law procedure left.

Judge Otis, in his Opinion of District Court Sustaining Motion to Dismiss this case (R. 133) truly said:

> "If the company can seek such a declaratory judgment then any person who has entered into a contract with another and who fears he may be sued by that other for breach of contract may proceed, as does the plaintiff here, in advance of the institution of that suit, to have determined an issue of fact which that suit will present. Certainly in the enactment of this statute the Congress contemplated no such radical departure in our jurisprudence from the old procedure."

The petition in the District Court describes a dispute about the existence of a fact, namely the condition of Edwin P. Haworth's health at a given time, and not a controversy as to the legal conclusion that might be drawn from established facts or those capable of simple demonstration. The purpose of the proceeding is not to settle any present "rights or other legal relations," but to settle one particular fact that may later be called into question in a possible suit, a suit that may possibly be brought at some future time upon life insurance policies which contain certain provisions applicable in event of disability of the insured.

This dispute is not even as to a completed fact capable of exact and final ascertainment, but as to a fact probably changing and resting somewhat in opinion.

Four of the policies (No. 537284, R. 59; No. N 760251, R. 79; No. N 808571, R. 99; No. N 808572, R. 119) provide that the disability provision is conditional upon continuance of total disability, and that upon recovery beyond that stage the disability benefit shall cease. The amount involved in the other is not enough for federal jurisdiction.

The purpose of the proceedings at bar is not to determine whether the defendants are entitled to recover at this time a judgment for a specific amount of

money against the plaintiff, but to determine whether the insured is disabled within the meaning of the policies of insurance upon his life. If he should now establish that fact he would not be entitled to a present judgment against the insurance company; it would not determine finally his right to a judgment in a future action. The adjudication would not be susceptible of violation and could not call for enforcement. It would not finally adjudicate the standing of the parties. If it should be declared that the insured now is disabled within the meaning of the policies, a similar proceeding could be brought at the end of each premium period to determine whether the insured were still disabled. That seems to us to reduce plaintiff's contention to an absurdity, for surely a court of equity would not enter any order or decree that would require a claimant to establish innumerable times a fact that would be an essential element in his recovery at some future time when a completed cause of action would accrue in his favor.

The inappropriateness of declaratory procedure to a judicial investigation of disputed facts, or to an inquiry where if the decision should go in one way it might involve further litigation, or to an inquiry that would not necessarily lead to a final determination of a right of one litigant against the other or of any rights or other legal relations between the parties, seems self evident. Such inappropriateness has been frequently stated by courts entitled to respect.

Lewis v. *Green*, Law Reports, (1905) H Ch. Div., 340;

Ziegler v. *Pickett*, 46 Wyo., 283, 25 Pac. (2d) 391;

Newsum et al. v. *Interstate Realty Co., et al.* 152 Tenn., 302, 278 S. W. 56;

Ladner et al. v. *Siegel et al.*, 294 Pa. 368, 144 Atl. 274;

Washington Detroit Theatre Co. v. *Moore*, 249 Mich., 673, 229 N. W. 618;

Legal Periodical Digest, page 5073;

41 Yale Law Journal, June, 1932, pages 1195-1212;

45 Harvard Law Review, page 1089.

The decisions of this court cited by the petitioner as presenting a conflict with the decision of the United States Circuit Court of Appeals for the Eighth Circuit are *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S., 249, and *Fidelity National Bank & Trust Company* v. *Swope*, 274 U. S., 123. We respectfully submit that when what is decided in those cases is applied to the facts of this case, there is not only no conflict but any decision other than that of the Circuit Court of Appeals for the Eighth Circuit would be irreconcilable with them, or with *Arizona* v. *California*, 283 U. S. 423, 462; *Alabama* v. *Arizona*, 291 U. S. 286, 291; *United States* v. *West Virginia*, 295 U. S. 463, 474; *New Jersey* v. *Sargent*, 269 U. S. 328, 338; and *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 325.

It is argued that the decision conflicts with the decision of the Circuit Court of Appeals for the Fifth Circuit in *Gully* v. *Interstate Natural Gas Co.* 82 F. (2d), 145. That was a suit against a State Tax Collector which involved finally assessing a tax upon plaintiff's property, fixing a lien thereon, and selling it to collect the tax, all of which, it was alleged, the defendant had determined to do. The facts bear no resemblance to those presented by the record in this case. The petitioner contends that some of the language used by the Circuit Court of Appeals for the Fifth Circuit

should be applied to this case. We say that whether that language as applied to the facts to which it was there applied truly expressed the law or not, it does not follow that it is applicable to the facts of this case, and no semblance of a conflict appears.

We respectfully urge that the petition for certiorari be denied.

REES TURPIN,
Solicitor for Respondents.

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 446.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION,
PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF RESPONDENTS.

REES TURPIN,
of Kansas City, Missouri,
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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF RESPONDENTS.

The petitioner as plaintiff filed a petition or bill in equity in the District Court of the United States for Western District of Missouri, Western Division, on January 5, 1935, naming the respondents here as defendants (Rec. 1). It describes five policies issued by it insuring the life of Edwin P. Haworth of Kansas City. Each contains a provision covering the event of the assured suffering dis-

ability. Four provide that provision is conditioned upon evidence of the continuance of the disability, and that the disability benefit shall cease upon recovery to an extent described. A copy of each was filed, and each is herein more particularly described. The insurer made a loan against each which is unpaid. The bill prays for a judgment declaring the status of the policies, which in effect is a declaration of the state of Edwin P. Haworth's health. The district court sustained defendants' motion to dismiss the bill on August 22, 1935, and filed an opinion (Rec. 80, 81-84). The petitioner appealed to the United States Circuit Court of Appeals for the Eighth Circuit which affirmed the decree on July 27, 1936 (Rec. 105). Writ of certiorari was granted herein November 16, 1936 (Rec. 107).

Policy No. 425229 was written June 1, 1911, in the principal amount of $10,000.00 (Rec. 2). The assured pledged this policy for a loan of $3,827.00, which with accrued indebtedness formed a total sum of $4,011.97 upon the first day of June, 1934 (Rec. 5). The policy provides (Rec. 3) that in event of the assured becoming wholly, continuously and permanently disabled as therein described, then in lieu of all other values, benefits, or privileges therein provided, without further payment of premium, all premiums previously due having been paid, the insurer would pay in full settlement, upon request of the life beneficiary and assignee, one-twentieth of the sum insured, and dividend additions, if any, and would pay the same amount annually thereafter until twenty such payments in all had been made, or would pay the amount

of annuity shown by a table of annuities therein contained, for the age of the insured at the last birthday preceding the receipt of such proof, and the same amount annually thereafter during the lifetime of the insured, provided that at every such annuity payment satisfactory proof were furnished that the insured was then living, any indebtedness to the insurer on account of said policy to reduce the amount of either of said annual payments in the same proportion that said indebtedness might bear to three-fourths of the sum insured and dividend additions, if any.

Under these provisions and the situation as alleged the amount payable to the assured for disability on the annuity basis would be $506.93 annually, beginning May 28, 1934, and on the twenty payment basis described in the petition the amount payable to the insured for disability would be approximately $267.46 annually, beginning on the same date. The amount due upon this policy at the time the petition was filed, therefore, in no event could be more than $338.00.

Policy No. 537284 was written November 9, 1921, in the principal amount of $5,000.00 (Rec. 7). The assured pledged it for a loan of $825.00 (Rec. 9). The policy provides (Rec. 8) that in event the insured should become wholly, continuously, and permanently disabled and would for life be unable to perform any work or conduct any business for compensation or profit, and satisfactory evidence of such disability were received at the home office of the insurer before the sum insured, or any installment thereof, became payable, the insurer would, upon the acceptance of such proof, if all premiums

previously due had been paid, waive the payment of all premiums falling due thereafter during such disability, and that if such disability existed before the insured attained the age of sixty years, the insurer would immediately pay to the life beneficiary the sum of ten dollars for each thousand dollars of the sum insured and would pay the same sum on the same day of every month thereafter during the lifetime and during such disability of the insured.

The policy further provides (Rec. 43) that if the insured recovers from the permanent total disability above described, the benefits herein provided will immediately cease and the policy will continue as if no disability had been incurred if the premiums falling due after such recovery are paid when due.

The petition, filed January 5, 1935 (Rec. 1), lays the date from which it asks disability to be determined as November 9, 1931 (Rec. 9). In the situation as alleged, the amount payable to the insured for disability at the time the petition was filed in no event could be more than $1,950.00.

Policy No. N 760251 was written October 9, 1929, in the principal amount of $10,000.00 (Rec. 10). Policy No. N 808571 was written September 9, 1929, in the principal amount of $10,000.00 (Rec. 13); and policy No. N 808572 was written October 9, 1929, in the principal sum of $5,000.00 (Rec. 16). Each is payable immediately upon receipt at petitioner's home office of due proof of the death of the insured, to the beneficiary therein named, Cora M. Haworth, respondent herein, and wife of the insured. Neither contains any provision for pay-

ment of benefits by reason of or on account of the insured's disability, or any acceleration of payment thereby. Each contains a provision described in the petition (Rec. 11, 14-15, 17) as being contained in a rider, that if, before default in payment of premium and before attaining the age of sixty years, the insured should become totally and permanently disabled by bodily injuries or disease, and were thereby prevented from performing any work or conducting any business for compensation or profit, the insurer would waive the payment of premiums falling due during such disability, it being provided therein that such disability should be presumed to be permanent if existing for a period of ninety consecutive days, if satisfactory evidence had not been previously furnished that such disability were permanent, and that, in the absence of the furnishing of such evidence, the benefit should accrue from the expiration of the said ninety days, but not from a date more than six months prior to the date that evidence of such disability satisfactory to the insurer should be received at its home office, it being further provided that no benefit should accrue prior to the expiration of said ninety days unless during that period evidence satisfactory to the insurer should be received at its home office, during the life of the insured, that the total disability would be permanent, in which event the benefit would accrue from the commencement of disability.

The rider described in the petition as being in each of the said three policies contains the following (policy No. N 760251, Rec. 53; policy No. N 808571, Rec. 63; policy No. N 808572, Rec. 73):

"The benefit under this provision is conditioned upon evidence of the continuance of total disability of the insured satisfactory to the company being furnished when requested and upon the representative of the company being permitted to examine the insured at any time, but such evidence or examination shall not be required oftener than once a year after the expiration of two years from the acceptance of such evidence. If it shall appear to the company that the insured is able to perform any work or conduct any business for compensation or profit after a claim has been allowed, then, except in case of the irrecoverable loss of the entire sight of both eyes or the irrecoverable total and permanent loss of the use of both hands or of both feet, or such loss of one hand and one foot, the disability benefit shall cease."

Petitioner's petition or bill covers 25 pages of the printed record (Rec. 1-25). When its verbiage is reduced into its simple essence it is a request, or as petitioner construes it, a demand that the district court determine now Edwin P. Haworth's state of health at the time named in the petition. It does not aver that if as a fact Edwin P. Haworth be disabled so as to entitle him to disability benefit provisions of the policies, either he or Cora M. Haworth is now entitled to sue upon them or has a present cause of action, or that either would now be entitled to a final judgment of any kind in a proceeding of any kind. It does not aver that if as a fact he be disabled now either he or his wife would be entitled to recover in event of his death at some future time. It presents nothing for determination but the simple fact of Edwin P. Haworth's present and past disability.

SUMMARY OF ARGUMENT.

I.

The Petition Does Not Present an Actual or Justiciable Controversy.

The declaratory judgment act does not change the essential requisites for the exercise of judicial power. Nor does it for the purposes of the act make that a controversy which before its enactment was not a controversy in the constitutional sense.

Ashwander v. Tennessee Valley Authority, 297 U. S. 288.

Opinion District Court Sustaining Motion to Dismiss (Rec. 83).

Opinion United States Circuit Court of Appeals (Rec. 94, 96-97).

a. The solution will be found by a practical application of legal principles to the particular case presented by the petition rather than by text-book abstractions and academic refinements of a general nature. An analysis of the case is therefore presented.

The petitioner asks the court to determine a fact, the only value of which determination would be that it could be employed by the petitioner as a defense in the event of a future suit on any of the policies.

When the petition was filed herein there was no present right of recovery of an amount sufficient to give a federal court jurisdiction. The petition, therefore, does not present a case or controversy between the parties as to the right

of either to a money judgment against the other in a federal court. The controversy cognizable here, if any there be, must, therefore, be about something other than a present right to a judgment for money.

The petitioner says its petition presents a controversy of fact, the adjudication of which in its favor will be a good defense to a possible future suit upon policies written in the face amount of more than $3,000.00. It argues therefrom that the determination of such fact would be a declaration of rights or legal relations involving the jurisdictional amount.

The respondents say no controversy in the constitutional sense is presented.

b. A dispute out of court about the present existence of a mutable fact, which may become an element in the determination of an action at law that may be commenced at some future time, is not a controversy in the sense in which that word is used in the Constitution.

Piedmont & Northern Ry. Co. et al. v. *United States et al.*, 280 U. S. 469.

Nashville, C. & St. L. Ry. Co. v. *Wallace*, 288 U. S. 249.

Fidelity National Bank v. *Swope*, 274 U. S. 123.

Willing v. *Chicago Auditorium Association*, 277 U. S. 274.

Opinion United States Circuit Court of Appeals (Rec. 97).

Arizona v. *California*, 283 U. S. 423.

Alabama v. *Arizona*, 291 U. S. 286.

United States v. *West Virginia*, 295 U. S. 463.

New Jersey v. *Sargent*, 269 U. S. 328.

Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288.

II.

The Petition Does Not Present a Controversy Which the District Court, by Mandate of the Federal Declaratory Judgment Act, Must Determine.

It is generally recognized that declaratory judgments are not applicable to every difference, or to every controversy that may arise between prospective litigants. In all jurisdictions it has been declared that the court has a discretion in determining whether under the law it should declare a judgment at all in any particular case.

Newsum et al. v. *Interstate Realty Co. et al.*, 152 Tenn. 302, 278 S. W. 56.

Freeman on Judgments, Vol. 3 (5th Ed.), Par. 1356.

Ziegler v. *Pickett*, 46 Wyo. 283, 25 Pac. (2d) 391.

Opinion of District Court Sustaining Motion to Dismiss (Rec. 81).

III.

The Court Did Not Abuse Its Discretion in Dismissing the Petition in This Case.

The purpose of the proceeding is not to settle any present "rights or other legal relations," but to settle one particular fact that may later be called into question in a possible suit. The dispute is not even as to a completed fact capable of exact and final ascertainment, but as to a fact probably changing and resting somewhat in opinion. If the insured should now establish the questioned fact, he would not be entitled to a present judgment against the insurance company; it would not determine finally his right to a judgment in a future action; the adjudication would not be susceptible of violation and could not

call for enforcement; it would not finally adjudicate the standing of the parties.

The declaratory procedure is inappropriate to a judicial investigation of disputed facts, or to an inquiry where, as here, if the decision should go in one way it might involve further litigation, or to an inquiry, as here, that would not necessarily lead to a final determination of the right of one litigant to recover against the other, and the discretion of the court to refuse to declare a judgment in such cases is generally recognized.

The petition or bill was properly dismissed in this case.

Lewis v. *Green*, Law Reports (1505), II Ch. Div. 340.

Ziegler v. *Pickett*, 46 Wyo. 283, 25 Pac. (2d) 391.

Rules of the Supreme Court, England, Order LIV. A.

Newsum et al. v. *Interstate Realty Co. et al.*, 152 Tenn. 302, 278 S. W. 56.

Freeman on Judgments, Vol. 3 (5th Ed.), Par. 1356.

Ladner et al. v. *Siegel et al.*, 294 Pa. 368, 144 Atl. 274.

Washington Detroit Theater Co. v. *Moore*, 249 Mich. 673, 229 N. W. 618.

Legal Periodical Digest, p. 5073.

41 Yale Law Journal, June, 1932, pp. 1195-1212.

45 Harvard Law Review, p. 1089.

ARGUMENT.

Three questions are presented here for determination.

1. Do the facts stated in the petition present an "actual" or justiciable "controversy," in the constitutional sense, between the plaintiff and the defendants which the federal district court may determine?

2. Do they present an "actual" or justiciable "controversy" which the court, by mandate of the Federal Declaratory Judgment Act of June 14, 1934, must determine, without power to dismiss the petition if it finds, in the court's judicial discretion, that the petition does not present such a case as under the law it ought to try in the peculiar manner of a proceeding for a declaratory judgment?

3. Did the court abuse its judicial discretion in dismissing the petition in this particular case?

I.

The Petition Does Not Present An Actual or Justiciable Controversy.

We will begin with the premise that the declaratory judgment act does not change the essential requisites for the exercise of judicial power. Nor does it for the purposes of the act make that a controversy which before its enactment was not a controversy in the constitutional sense.

In *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, l. c. 325, this court said:

> "The Act of June 14, 1934, providing for declaratory judgments, does not attempt to change the essential requisites for the exercise of judicial power. By its terms it applies to 'cases of actual controversy,' a phrase which must be taken to denote a controversy of a justiciable nature, * * *."

Again this court there said, l. c. 324:

> "The pronouncements, policies and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining."

We respectfully submit that the district court and the circuit court of appeals reached proper conclusions in this case.

In his Opinion of District Court Sustaining Motion to Dismiss, in this case (Rec. 83), Judge Otis said:

> "The real question here is whether the case stated by the petition is within the legitimate scope of the Declaratory Judgments Act. Does it present a present controversy in the constitutional sense between the plaintiff and defendants—'an adversary proceeding, involving a real, not a hypothetical, controversy,' and is the judgment sought a judgment finally determinative of that controversy? *Nashville, etc., Ry. Co.* v. *Wallace, supra.* If an actual controversy in such a sense is presented has the plaintiff, with respect to that controversy, any present 'rights or other legal relations' to be declared?
>
> "It is my view that both these questions must be answered in the negative."

Judge Thomas, in the opinion of the United States Circuit Court of Appeals in this case (Rec. 94, 96-97), said:

> "The apprehension of the plaintiff is that suit will be brought against it at some time prior to the running of the statute of limitations.
>
> "Apparently the sole object of this proceeding is to furnish plaintiff an opportunity to establish now its alleged defense to such anticipated litigation, because no claim is made to any contractual rights resulting from the purported wrongful non-payment of premiums. Assuming that insured has defaulted, as alleged, the plaintiff in such case is entitled to only one of two rights. First, it may rely on the contract and assert its right to damages or to specific performance; or, second, it may cancel or rescind the contract. In the present proceeding it seeks the equivalent of cancellation and makes no claim to the first right. The right of cancellation is one which the plaintiff may exercise itself without asking the aid of the court. The only advantage to be derived from a declaratory judgment is an adjudication of the right of cancellation, and the only value of such an adjudication is that it will be a defense in the event of a future suit on the policies. The only disadvantages alleged to result from the present status are the danger of loss of evidence and the setting aside of reserves."

a.

We believe the solution of this matter will be found by practical application of legal principles to the particular case presented by the petition rather than by text-book abstractions and academic refinements of a general nature. We believe, therefore, the following analysis will be clarifying.

In its last analysis the object of the petitioner in filing the original petition in this proceeding was to obtain from the district court a finding of a particular fact, the existence or truth of which the petitioner denies. As a practical matter the petitioner seeks to cast upon the respondents the positive burden of establishing it by evidence as against petitioner's mere negative assertion that such fact does not exist. Scrutiny of that petition discloses no statement, allegation or admission that if the district court should find that the respondents have established that fact either respondent would be entitled now or in the future to recover upon the policies described.

The fact the petitioner asks the court to determine is that Edwin P. Haworth has not suffered a disability of such a character and for such time as would entitle him to a waiver of the payment of such premiums of certain insurance policies as became due and remained unpaid at the time this proceeding was commenced. The only value of such a determination would be that it could be employed by the petitioner as a defense in the event of a future suit on any of the policies.

The fact sought to be determined is a changeable condition—the state of insured's health. Neither of the policies numbered N 760251 (Rec. 46), N 80571 (Rec. 57) and N 80572 (Rec. 67) confers any present right to sue on account of or by reason of insured's disability. The disability benefit under each is that the insurer will waive premium payments falling due during the disability. Each provides that such benefits shall be conditioned upon evidence of the continuance of total dis-

ability. The insured might be disabled now, and be proved to be so, and yet unless he should continue disabled until his death, or recover and pay premiums until his death, his beneficiary would never have a cause of action upon the policies. If the question of fact which the petitioner asks the court to find should be determined against its contention and in favor of the respondents, such determination, even if later it could be used in suits upon these policies as an adjudication of that fact, would not serve to establish a cause of action upon any of them.

The other two policies mentioned in the petition are numbered 425229 and 537284, respectively. It appears from respondents' statement herein that when the petition was filed there was no present right of recovery of as much as three thousand dollars on either of them. It is not alleged nor asserted that upon any policy, or upon all of them, under any possible finding of fact, either respondent was when the petition was filed, entitled to recover as much as three thousand dollars. It is manifest, therefore, that a federal court has no jurisdiction of the subject matter by reason of any amount presently recoverable. The respondents could not have maintained a suit in the federal court for a judgment on any of the policies. Only by living and permitting installments to remain long overdue would the insured ever be entitled to sue in the federal court for benefits accruing by reason of his disability.

It would seem clear that looking at the matter from the standpoint of the respondents, the insured and his wife as beneficiary, the petition filed in the district court

does not present an actual justiciable case or controversy, in the constitutional sense, cognizable in a federal court.

At most the respondents could now establish a mutable fact which, if the condition of the insured should not improve, might help his beneficiary to establish a complete case at some time in the future.

Petitioner's counsel say the insurer has asserted a cancellation and that insured has a right to sue in equity to set it aside. If such assertion was made before this suit was commenced it was done entirely out of court by petitioner's own declaration and not otherwise. Why should the insured sue to set aside such a cancellation when the same question could be raised by the insurer at every premium-paying period or maturity until the assured's death?

The petitioner, however, insists that looking at the matter from its standpoint the petition does present an actual justiciable case or controversy.

Obviously when this petition was filed there was not, and could not be, any case or controversy between the parties as to the right of either to a money judgment against the other in a federal court. The controversy cognizable here, if any there be, must, therefore, be about something other than a present right to a judgment for money.

None of the policies numbered N 760251 (Rec. 46), N 808571 (Rec. 57), and N 808572 (Rec. 67) contains any provision for payment of benefits by reason of or on account of insured's disability. Each provides that if

before default in payment of premium and before attaining the age of sixty years, the insured shall become totally and permanently disabled by bodily injury or disease, and is thereby prevented from performing any work or conducting any business for compensation or profit, the insurer will waive the payment of premiums falling due during such disability. Each provides that the benefit under this provision shall be conditioned upon evidence of the continuance of total disability, and that if it should appear that the insured is able to perform any work or conduct any business for profit after a claim has been allowed, then except in the case of the irrevocable loss of the entire sight of both eyes, or the irrevocable total and permanent loss of the use of both hands, etc., the disability benefit shall cease (Rec. 53, 63, 73). Neither Edwin P. Haworth, whose life is insured, nor Cora M. Haworth, the named beneficiary, is asserting any present right to recover upon any of these policies.

Each of these policies recites that it is made in consideration of a specified annual premium, and provides that if such premium is not paid when due, the policy shall cease, subject to a grace and to certain values and privileges therein described. The insured, relying upon his disability, and upon the disability provisions of his policies, ceased paying premiums.

The petitioner prays that the court render a declaratory decree or judgment, declaring that each of the policies described in the petition is null and void and that each of them has lapsed because of nonpayment of premiums.

The petitioner says that the real purpose of the proceeding is to have an immunity declared. It says that if the facts are as it contends they are there can be no recovery against it on the policies (practically every prospective defendant to a possible lawsuit says the same); that some day it may be sued; that it gathers an intention to sue from respondents' conduct. It says that if this question of fact should be adjudicated in its favor the conclusion must follow that it is not now obligated, and it asks the district court to find the facts in its favor and preserve the adjudication so that, if need be, it can be taken from the judicial shelf and be used as a defense in possible subsequent actual litigation. It refers the court to the declaratory judgment act for its authority so to do.

If the act be given such effect it will be a startling departure from anything heretofore known in our jurisprudence. We are familiar with proceedings to perpetuate testimony, but this is something different in character. Testimony has long been perpetuated by reducing it to writing and preserving it for future reading. Here it is sought to arrive at a judicial determination of a fact from testimony and to preserve the determination in somewhat the manner the testimony of witnesses has been preserved.

Petitioner says that if this question of fact be determined in its favor that adjudication will be a good defense to a future suit on the policies, and that since it has a good defense the relation of insurer and insured does not exist between it and the respondents. It argues

therefrom that the determination of such fact is a declaration of "rights" or "legal relations."

There is no uniqueness in petitioner's position. The relation of debtor and creditor would be involved whenever one asserted another owed him a debt and that other denied it. The relation of tort-feasor would be involved whenever one claimed to have been injured by the act of another and that other denied it. Under this theory it is difficult to imagine a possible or prospective lawsuit where some fact would not be subject to a declaratory judgment.

b.

We submit that a dispute out of court about the present existence of a mutable fact which may become an element in the determination of an action at law that may be commenced at some future time is not a controversy in the sense in which that word is used in the constitution.

In *Piedmont & Northern Ry. Co. et al.* v. *United States et al.*, 280 U. S. 469, the effect of what the plaintiff really asked was that the court determine as a matter of fact whether certain proposed extensions would be "street, suburban, or interurban electric railways, etc." That case was decided before the enactment of the declaratory judgment act. A carrier by railroad subject to the interstate commerce act, operated in interstate commerce about 128 miles of line in North and South Carolina, using exclusively electric locomotives. It determined to extend its lines 53 miles on one route and 75

miles on another, in order to connect with several steam railroads. The interstate commerce act prohibits any carrier by railroad subject to the act from undertaking any extension of its lines or construction of new lines, without first obtaining from the Interstate Commerce Commission a certificate of public necessity and convenience. It provides for applications for certificates and prescribes the procedure and mode of disposal. Paragraph 22 exempts from the scope of those provisions the construction of industrial and certain other tracks "located wholly within one state, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

Believing that the above provisions of the act were inapplicable, the railway company intended to make the proposed extensions without securing from the commission a certificate of public necessity and convenience. There was, however, a proceeding in which the commission denied its right to a certificate.

It brought a suit against the United States in the federal court, the general purpose of which was to set aside the order of the Interstate Commerce Commission to the effect that it was not entitled to a certificate of public necessity and convenience. The ground of its suit was that what it intended to do did not bring it within the provisions of the act. The effect of what the plaintiff really asked was that the court determine that the proposed extensions came within the exemption of Paragraph 22. That is, to determine as a matter of fact, so far as the extensions were concerned, whether they would

be 'street, suburban, or interurban electric railways, which were not operated as a part or parts of a general steam railroad system of transportation.'' The court said, l. c. 477:

> ''The relief which plaintiffs seek is not from the order but from the uncertainty as to the applicability of the statute. If the statute gives the commission jurisdiction over the railway's application, then concededly the order is not subject to attack. If, on the other hand, the statute does not confer the jurisdiction, then obviously the order is no obstacle to the railway's plans. What plaintiffs are seeking is, therefore, in substance, a declaratory judgment that the railway is within the exemption contained in Paragraph 22 of the Act. Such a remedy is not within either the statutory or the equity jurisdiction of federal courts.''

Nashville, C. & St. L. Ry. Co. v. *Wallace*, 288 U. S. 249, was decided by this court before the enactment of the Federal Declaratory Judgment Act. It involved the application of the Tennessee Declaratory Judgment Act. This court, in ordering the cause set down for argument, invited the attention of counsel to the question ''whether a case or controversy is presented in view of the nature of the proceedings in the state court.'' The court said, l. c. 259:

> ''This preliminary question, which has been elaborately briefed and argued, must first be considered, for the judicial power with which this court is invested by Art. III, Par. 1 of the Constitution, extends by Art. III, Par. 2, only to 'cases' and 'controversies'; if no 'case' or 'controversy' is presented for decision, we are without power to review the decree of the court below.''

The railway company filed its bill of complaint in the state chancery court, joining as defendants the attorney general and the state officials charged with the duty of collecting the gasoline privilege tax imposed by the Tennessee statute. The complaint charged that the defendants assert that the statute taxes the privilege of storing gasoline within the state and is applicable to complainant; that they have demanded payment of the tax in a specified amount and have determined to enforce their demand and that, under the circumstances alleged, the statute as applied to complainant is invalid under the commerce clause and the Fourteenth Amendment. The relief prayed was that the taxing act be declared unconstitutional as applied to complainant. A demurrer was sustained to the sufficiency in law of the allegations relied on to establish the unconstitutionality of the tax. The decree was affirmed by the highest court of the state.

This court, declaring that the issues thus raised and judicially determined would constitute a case or controversy if raised and decided in a suit brought by the taxpayer to enjoin collection of the tax, said that "the narrow question presented for determination is whether the controversy before us, which would be justiciable in this court if presented in a suit for injunction, is any the less so because through a modified procedure appellant has been permitted to present it in the state courts, without praying for an injunction or alleging that irreparable injury will result from the collection of the tax."

This case lacks the essentials which this court enumerated and was careful to state existed in the situation

brought before it in *Nashville, C. & St. L. Ry. Co.* v. *Wallace.*

There this court was careful to note (l. c. 260) the provision of the Tennessee statute that the court might refuse to render a declaratory judgment where, if rendered, it "would not terminate the uncertainty or controversy giving rise to the proceeding." As we have seen, a declaratory judgment could not terminate the uncertainty and the controversy which appellant alleges as the ground of its complaint. If Edwin P. Haworth should in this proceeding be declared to be disabled now, and should die, in a long or short time, the beneficiary of the policies would still face a controversy as to whether the disability continued after another premium maturity.

Another feature the court evidently considered essential (l. c. 260) is that the provisions of the Tennessee statute might only be invoked when the complainant asserts rights which are challenged by the defendant. In the case at bar the petition describes neither a right in plaintiff nor an invasion by the defendant. Appellant merely says that if a particular fact be found to exist now and shall continue without a change to which it is subject it may at some time in the future be sued—sued successfully. It asks that as a starting point for a piecemeal determination the present status of a changeable fact be determined. We cannot follow the argument that the petition here asserts a right which is challenged by the defendant.

Another feature stressed by the court in *Nashville, C. & St. L. Ry. Co.* v. *Wallace* was (l. c. 261-262) that valuable legal rights asserted by the complainant and threatened with imminent invasion by appellees would be directly affected to a specific and substantial degree by the decision of a question of law. The question appellant seeks to present for determination here is purely one of fact. No question of law is presented.

Another feature stressed there (l. c. 262) is that the question presented lends itself to judicial determination and is of the kind which the Supreme Court traditionally decides, and that the relief sought is a definitive adjudication of a disputed constitutional right of the appellant (the plaintiff). The court (l. c. 264) said: "The issues raised here are the same as those which under old forms of procedure could be raised only in suit for an injunction or one to recover the tax after its payment. But the constitution does not require the case or controversy should be presented by traditional forms of procedure, invoking only traditional remedies." If our federal courts traditionally have judicially determined a question of changeable fact in a case which involves the issues of an action at law, before any action is brought, we are not familiar with the tradition.

In *Fidelity National Bank* v. *Swope*, 274 U. S. 123, l. c. 131, in holding that a case or controversy was presented this court said:

> "Under this procedure, the judgment to be awarded finally determines, subject to appeal, the

validity of the ordinance authorizing the improvement, the limits of the benefit district, the method of apportioning benefits, and the validity of the proposed liens."

Obviously under that ruling a decision which could be final only as to one party, and might not be final as to the other, does not meet the requirements of finality.

In *Willing* v. *Chicago Auditorium Association,* 277 U. S. 274, decided before the Federal Declaratory Judgment Act was adopted, the Auditorium Association had constructed an expensive commercial building on ground leased to it for long terms. Finding the income inadequate to pay profits on the investment, and desiring to substitute on the same ground a larger building of modern type, but fearing that under the terms of the leases it could not remove the existing structure without the lessors' consent, it brought a suit for the purpose of establishing its right to do so, praying also that the defendants be restrained from taking any steps to prevent such removal. Mr. Justice Brandeis said, l. c. 288:

"Obviously, mere refusal by a landlord to agree with a tenant as to the meaning and effect of a lease, his mere failure to remove obstacles to the fulfillment of the tenant's desires, is not an actionable wrong, either at law or in equity."

Just as obviously, submission by the insured to the insurer of proof that his condition is such as to disable him, is, although the insurer may disagree with him, not an actionable wrong either at law or in equity.

Again this court there said:

"But still the proceeding is not a case or controversy within the meaning of Article III of the Constitution. The fact that the plaintiff's desires are thwarted by its own doubts, or by the fears of others, does not confer a cause of action. No defendant has wronged the plaintiff or has threatened to do so. Resort to equity to remove such doubts is a proceeding which was unknown to either English or American courts at the time of the adoption of the Constitution and for more than half a century thereafter."

The circuit court of appeals properly disposed of the question of reserves when Judge Thomas said (Rec. 98-99):

"Second, the plaintiff insists that it is injured and its rights are prejudicially affected by reason of the fact that it is required annually to set aside substantial reserves for each of the policies in question until it is judicially determined that they have lapsed and are null and void. This claim is without merit for two reasons. First, if it be true that reserves must be set aside as alleged, it is not shown that this is the result of any of the acts attributed to the defendants; and, second, the plaintiff is not thereby deprived of any property right. The funds called reserves continue to be the plaintiff's property, and its control over such funds is neither modified nor affected by the notices served upon it by defendants. The claim of plaintiff in this regard is analogous to the claim asserted by the State of New Jersey in the *Sargent Case, supra,* and disposed of by the Supreme Court in the following language:

'As respects the State's submerged lands, the bill signally fails to disclose any existing controversy within the range of the judicial power. Stating merely that the State will be deprived of revenue from the leasing of such lands

> is not enough. Facts must be stated showing that the act is being or about to be applied in a way which does or will encroach on or prejudicially affect the State's qualified right in the lands.'

"The same rule was stated with equal emphasis by the Supreme Court in the *Ashwander Case, supra,* wherein it is said:

> 'The pronouncements policies and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining.' "

The setting up of reserves does not create present rights or other legal relations between the petitioner and the respondents. Every obligor and debtor is faced with the problem of maintaining an ability to pay when payment shall be required. On the theory advanced by petitioner every debtor or obligor who questions his obligation would be entitled to maintain a suit for a declaratory judgment to determine whether he must maintain himself in a position to pay if and when called upon. Petitioner can claim no substantial uniqueness in its situation.

Nor is the amount of the reserves a proper measure of the amount in controversy. One who is sued for $3,000.00 would not be heard to say that because he must maintain $3,500.00 in liquid assets to assure his ability to pay in event judgment should go against him the amount involved is $3,500.00 and not $3,000.00. No more

can petitioner be heard to say that the amount of its reserves upon a policy determines the amount involved in a suit upon it.

We respectfully submit that the United States Circuit Court of Appeals, in its opinion (Rec. 97), properly said:

> "We are impressed that the situation thus presented by the petition amounts to no more than an 'assumed potential invasion' of plaintiff's rights, and that it does not for this reason present a justiciable controversy. *Arizona* v. *California*, 283 U. S. 423, 462. The judicial power of the federal courts does not extend to the giving of mere advisory opinions or the determination of abstract propositions. *Alabama* v. *Arizona*, 291 U. S. 286, 291; *United States* v. *West Virginia*, 295 U. S. 463, 474; *New Jersey* v. *Sargent*, 269 U. S. 328, 338. To present an 'actual controversy' within the constitutional meaning of that phrase there must be a statement of facts showing that the defendant is acting or is threatening to act in such a way as to invade, or prejudicially affect, the rights of the plaintiff. *New Jersey* v. *Sargent*, *supra*. The declaratory judgment act does not change the essential requisites for the exercise of judicial power nor alter the character of controversies which are the subject of judicial power under the constitution. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 325; *United States* v. *West Virginia*, 295 U. S. 463, 475."

II.

The Petition Does Not Present a Controversy Which the District Court, by Mandate of the Federal Declaratory Judgment Act, Must Determine.

Petitioner's argument proceeds upon the theory that in every case of actual controversy that involves rights

and other legal relations the district court *must* entertain a petition or bill in equity filed by any interested party for a declaratory judgment. That would mean that any interested party to any controversy would have an absolute right to have his case tried by the declaratory judgment procedure provided by the statute. That would mean that the Congress has said peremptorily to the courts that they must try in that manner every actual controversy presented by such a petition.

We cannot believe that the Congress intended to work such a change in judicial procedure and practice and leave the courts no discretion in the matter. The proper way for the court to exercise that discretion is either to entertain the bill and hear the evidence or dismiss the bill on its face. If it believes the bill does not present such a case as under the law it ought to try in the peculiar manner of a proceeding for a declaratory judgment, it has a judicial right to dismiss the bill which the Congress cannot take away from it. The appellate court may inquire whether the trial court has abused that judicial right, but the Congress cannot take it from the courts.

Many states have authorized declaratory judgments by statutes which have been upheld in principle by their courts. It is generally recognized that such statutes are not applicable to every difference that may arise beween prospective litigants. In all jurisdictions it has been declared that the court has a discretion in determining whether under the law it should declare a judgment at all in any particular case.

In *Newsum et al.* v. *Interstate Realty Co. et al.*, 152 Tenn. 302, 278 S. W. 56, the Supreme Court of Tennessee, holding that the case before it was not a proper one for a declaratory judgment, said:

> "Recognizing that the courts have a very wide discretion under these acts, which should be exercised with the utmost caution, it has been said by good authority that 'a declaration may properly be refused if it can be made only after a judicial investigation of disputed facts.' Freeman on Judgments, Vol. 3 (5th Ed.), Par. 1356."

In *Ziegler* v. *Pickett*, 46 Wyo. 283, 25 Pac. (2d) 391, the court exercised judicial discretion. A grocer sought a judgment declaring whether or not a provision of a statute under which he was licensed that forbade his advertising for sale certain beverages which he was licensed to sell, were valid. The ground of the challenge was that the provision forbidding advertising was not expressed in the title of the act. The court said:

> "If we answer that the provision forbidding advertising is expressed in the title of the act, it would still be open to the plaintiff, or to others similarly situated, to contend that the regulation is void on some ground not now pressed."

Then the court said:

> "If we answer that the provision forbidding advertising is not expressed in the title of the act, plaintiff's rights as a licensee would still be uncertain."

The court concludes:

> "In these circumstances we think a proper exercise of judicial discretion requires the refusal to

render a declaratory judgment, and the reserved question need not be answered."

The exercise of this discretion by dismissing the bill and refusing to declare a judgment as demanded is the manner of deciding the matter prescribed by Equity Rule 29. The alternative would be to require the court to hear the evidence and then find from it that the case was of such a nature that the court would in its judicial discretion refuse to declare a judgment, a conclusion which it could reach from examination of the bill itself. The act of Congress undertakes to confer upon the courts of the United States the "power" upon appropriate pleading to declare rights and other legal relations of any interested party, etc. The Congress has not undertaken to deprive the courts of judicial discretion in the manner in which that power shall be exercised, or of their power to refuse to exercise it in cases to which they deem it inappropriate.

If this law shall be held to be valid, and if it shall be construed as respondent is asking this court to construe it, the procedure and practice in the federal courts will be revolutionized in a manner neither intended nor foreseen by the Congress.

In his Opinion of District Court Sustaining Motion to Dismiss, in this case (Rec. 81), Judge Otis said:

> "If the company can seek such a declaratory judgment then any person who has entered into a contract with another and who fears he may be sued by that other for breach of contract may proceed, as does the plaintiff here, in advance of the institution of that suit, to have determined an issue of

fact which that suit will present. Certainly in the enactment of this statute the Congress contemplated no such radical departure in our jurisprudence from the old procedure."

III.

The Court Did Not Abuse Its Discretion in Dismissing the Petition in This Case.

The inappropriateness of declaratory procedure to a judicial investigation of disputed facts, or to an inquiry where if the decision should go in one way it might involve further litigation, or to an inquiry that would not necessarily lead to a final determination of the right of one litigant to recover against the other, and the discretion of the court to refuse to declare a judgment in such cases is ably discussed in *Lewis* v. *Green*, Law Reports (1905), II Ch. Div. 340. That case is cited in *Ziegler* v. *Pickett, supra*, 46 Wyo. 283, 25 Pac. (2d) 391. It arose in England under the Rules of the Supreme Court, Order LIV. A, which apparently had the force there of the statutory act here. It provided: "In any division of the high court, any person claiming to be interested under a deed will or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested." And "The court or judge shall not be bound to determine any such question of construction if in their opinion it ought not to be determined on originating summons." The court holding that in any case it could not under the rule determine complicated facts—in that instance an accounting—said:

"Of course, in a sense, every question of construction may involve some question of fact. It may be a question about which there is no dispute, but in order to raise any question of construction some facts must be proved or admitted."

The court in holding that the procedure is only intended to enable the court to decide questions where decisions of those questions, whichever way it may go, will settle the litigation between the parties, said:

"It seems to me that under such circumstances as those under which this summons was issued, Order LIV. A is not the appropriate mode of procedure. The result will be this: the court may, after considerable litigation, involving an argument in a court of first instance, an argument in the court of appeal, and possibly an argument in the House of Lords, come ultimately to the decision that on the question of construction raised by this summons the applicant is right. Well, what then? No relief can be given on that. There are other points which have to be decided. They can only be decided by bringing an action, and in that action it may turn out that, notwithstanding the applicant is right on the questions of construction, he is ultimately found to be wrong. The respondent will have had to pay all of the expense of the litigation on the question of construction, which will be utterly useless. It seems to me that where one finds circumstances such as I find here, the procedure under Order LIV. A is improper. It is only intended to enable the court to decide questions of construction where the decision of those questions, whichever way it may go, will settle the litigation between the parties. It is not intended that questions of construction which, if they are decided in one way only will settle the dispute between the parties, should come up for decision on an originating summons. It would be most inconvenient to resort to the order in a case where it is quite uncer-

tain what may be the ultimate decision on the point of construction, and where if the decision is in one way it involves further litigation."

The order there considered speaks of a question of construction, while the statute here speaks of "rights and other legal relations," but that does not alter the reasoning. Where the court there said of the order: "It is only intended to enable the court to decide questions of construction where the decisions of those questions, whichever way it may go, will settle the litigation between the parties," it might just as well be said of the statute here: It is only intended to enable the court to decide rights and other legal relations where the decision of them, whichever way it may go, will settle the litigation between the parties."

The order there expressly stated that the court or judge should not be bound to determine any such question if in their opinion it ought not to be determined on originating summons. Under our constitution the court has such discretion without a gift of it by the Congress and the Congress could not, if it wanted to, take it from the court.

Let us illustrate the soundness of the principles declared. Suppose the courts should determine in this proceeding that Mr. Haworth was disabled at the times mentioned in the bill. Upon demand by his widow for the proceeds of the policies after his death the insurance company could say to her: "We deny that Mr. Haworth's disability continued until his death. We will not pay without suit." She would still, despite the declaratory

judgment in her favor, have to sue and to cover the same ground, and almost to the same extent.

In *Newsum et al.* v. *Interstate Realty Co. et al.*, 152 Tenn. 302, 278 S. W. 56, the Supreme Court of Tennessee, holding that the complainants who, owning real estate placed it for sale with more than one agency, each of which claimed a commission for a sale, were, under a bill which asked relief in interpleader, and, in the alternative, for a declaratory judgment, not entitled to interplead because the defendants claimed independently of each other, and there was no specific fund at stake. In holding the case was not one for a declaratory judgment, the court said:

> "A declaratory judgment is essentially one of construction. It is apparent from the history of the legislation providing for this procedure, as well as from the recitals of the Uniform Declaratory Judgments Act itself, that its primal purpose is the construction of definitely stated rights, status, and other legal relations, commonly expressed in written instruments, although not confined thereto, and, while determination of an issue of fact is authorized by Section 9 of the Act, the settlement of disputed facts at issue between the parties will ordinarily be relegated to the proper jurisdictional forums otherwise provided. Recognizing that the courts have a very wide discretion under these acts, which should be exercised with the utmost caution, it has been said by good authority that 'a declaration may properly be refused if it can be made only after a judicial investigation of disputed facts.' Freeman on Judgments, Vol. 3 (5th Ed.), Par. 1356."

Ladner et al. v. *Siegel et al.*, 294 Pa. 368, 144 Atl. 274, was based upon the Declaratory Judgment Act of

Pennsylvania. In its discussion of the application of the act the Supreme Court of that state said "nor will the court prejudge a case which possibly may arise," and: "Ordinarily, it will not act where there is a dispute as to facts, or such controversy may arise."

In *Washington Detroit Theater Co.* v. *Moore*, 249 Mich. 673, 229 N. W. 618, the Supreme Court of Michigan said:

> "6. Ordinarily the court will refuse a declaration which can be made only after a judicial investigation of disputed facts, especially where the disputed questions of fact will be the subject of judicial investigation in a regular action."

In Legal Periodical Digest, p. 5073, is a digest of a comment on declaratory judgments in federal courts, which appeared in 41 Yale Law Journal, June, 1932, pp. 1195-1212. It evidently is written in reply to a comment published in 45 Harvard Law Review, at page 1089, in which was formulated a series of arguments designed to indicate that the declaratory judgment, however well it may function in state courts, is not well adapted to federal practice. We quote from the digest of the Yale Law Journal comment as follows:

> "By experience, declaratory actions have proved most congenial to rulings of law on more or less undisputed facts and the complete discretion of the court over declaratory relief would enable it to decline to pass upon complicated or disputed facts by declaration. * * * An examination of the state cases in which statutes and ordinances have been reviewed for constitutionality or construction discloses that almost without exception they involved issues of law without any dispute as to the facts."

This proceeding at bar is brought for the sole purpose of deciding a dispute over which there would undoubtedly be much conflict of testimony, namely, the present and past condition of health of Edwin P. Haworth.

Conclusion.

We respectfully submit that no chancellor could find it in his judicial conscience to put upon the insured respondent and his wife the hardship which the sustaining of this petitioner insurance company's bill—a bill in equity—would impose upon them. If in this proceeding the court should declare Mr. Haworth disabled, that would not end the matter. After the expense of a trial he would be left with only the first hurdle cleared. If after a while he should die his wife would still have before her the burden of proving that his disability established in this proceeding had continued until his death. If he should live through a span of years he might be called upon time after time to respond in the same kind of proceeding to determine whether his disability continued. He might in time become so exhausted that he could no longer maintain the fight, and his case would be lost by default. If he should die in a shorter time his wife would not find the question of her insurance settled by this proceeding. The proof required of her in a suit on the policies would not even be lessened, for his present condition though determined here would have to be shown as a basis for comparison in determining whether since this time he had recovered from his

adjudged disability to such an extent that the company would not be liable.

Petitioner argues that denial by the insurance company of the fact of the insured's disability creates a controversy. We respectfully submit that to say a controversy that could in this proceeding be ended only by a finding for the petitioner and would just be begun by a finding for the respondents is a controversy within the meaning of the statute and of the constitution would be at variance with everything this court has ever said upon the subject.

We further submit that the petitioner has no "present rights or other legal relations" to be declared.

We respectfully submit that the judgment of the United States Circuit Court of Appeals affirming the judgment of the district court dismissing petitioner's bill should be affirmed.

REES TURPIN,
of Kansas City, Missouri,
Counsel for Respondents.

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In the Supreme Court
of the
United States

OCTOBER TERM, 1936.

No. 446.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT; A CORPORATION,
PETITIONER,

VS:

EDWIN P. HAWORTH AND CORA M. HAWORTH.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR REHEARING AND FOR MODIFICATION OF THE OPINION.

REES TURPIN,
Solicitor for the Respondents.

CASES CITED.

Newsum et al. v. Interstate Realty Co. et al., 152 Tenn. 302, 278 S. W. 56 6

Ladner et al. v. Siegel et al., 294 Pa. 368, 144 Atl. 274 6

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In the Supreme Court
of the
United States

OCTOBER TERM, 1936.

No. 446.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION, PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR REHEARING AND FOR MODIFICATION OF THE OPINION.

TO THE SUPREME COURT OF THE UNITED STATES, AND THE HONORABLE JUDGES THEREOF:

Come now Edwin P. Haworth and Cora M. Haworth, the respondents in the above entitled proceeding, and present this their petition for a rehearing and for modification of the opinion and decision of this court filed

herein concerning the validity, the application and the applicability of the Federal Declaratory Judgment Act of June 4, 1934. In support of this petition for a rehearing the respondents respectfully show that the court overlooked material matters of great public importance.

Respondents' counsel, signing this petition, further certifies that it is presented in good faith and not for delay.

This is the first case in which the Federal Declaratory Judgment Act has been brought before this court. Definition of the scope of the law is of widespread public importance. Many declaratory proceedings commenced by insurance companies and others are pending in the district courts and in the circuit courts of appeals. As the opinion filed in this case is written, implications and conclusions will be drawn from it which we believe this court does not intend. If this court does intend them, then we respectfully submit they should be stated positively instead of being left to implication.

We respectfully submit that the case presented by the record here is not sufficiently disposed of by a holding that the petition presents a controversy in the constitutional sense. The power of the trial court to exercise judicial discretion in entertaining or refusing to entertain the petition, or the case that may be presented by the evidence, on other grounds is of equal importance.

The district court dismissed plaintiff's bill or petition asking for a declaratory judgment concerning certain policies of insurance, one of the grounds being that it does not present a controversy in the constitutional sense between plaintiff and defendants. (R. 83). Judge Thomas in the majority opinion of the circuit court of appeals said: "The question for our determination is

whether the facts stated in the petition present an 'actual' or justiciable 'controversy' in the constitutional sense, between the plaintiff and defendants." (R. 95). The conclusion of that court is thus stated in that opinion (R. 99):

> "The petition, therefore, fails to state a cause of action under the Declaratory Judgment Act because it fails to state facts disclosing an 'actual controversy' in the constitutional sense. It fails in this because the facts averred do not show that any right of the plaintiff is presently being invaded or imminently and prejudicially affected by the alleged acts of the defendants. The judicial power of the federal courts does not extend to such vague and indefinite questions. Consequently the trial court did not err in dismissing the petition, and the order appealed from must be and it is Affirmed."

This court, in its opinion filed March 1, 1937, decided that the Declaratory Judgment Act must be deemed to fall within the ambit of congressional power, so far as it authorizes relief which is consonant with the exercise of the judicial function in the determination of controversies to which under the Constitution the judicial power extends.

This court further held that plaintiff's petition presents a case or controversy that is not by its nature removed from the ambit of congressional power, but, to the contrary, is of a kind or character to which the judicial power extends. You said:

> "There is here a dispute between parties who face each other in an adversary proceeding. The dispute relates to legal rights and obligations arising from the contracts of insurance. The dispute is definite and concrete, not hypothetical or abstract. Prior to this suit, the parties had taken adverse positions with respect to their existing obligations.

> Their contentions concerned the disability benefits which were to be payable upon prescribed conditions. On the one side, the insured claimed that he had become totally and permanently disabled and hence was relieved of the obligation to continue the payment of premiums and was entitled to the stipulated disability benefits and to the continuance of the policies in force. The insured presented this claim formally, as required by the policies. It was a claim of a present, specific right. On the other side, the company made an equally definite claim that the alleged basic fact did not exist, that the insured was not totally and permanently disabled and had not been relieved of the duty to continue the payment of premiums, that in consequence the policies had lapsed, and that the company was thus freed from its obligation either to pay disability benefits or to continue the insurance in force. Such a dispute is manifestly susceptible of judicial determination. It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts."

This court has before it the able opinions filed in the district court and the circuit court of appeals. The matter was argued at length in our original brief. We feel we can say no more than has been said upon the question of "justiciable controversy."

We will accept the decision of this court that a dispute is not withdrawn from judicial cognizance merely by the circumstance that it turns upon a question of fact.

Accepting and following, as it seems we must, the decision of this court thus far, we respectfully submit that the opinion filed in this case in this court creates uncertainty in a matter of great and wide public importance.

We respectfully submit that the briefs of these respondents, both here and in the circuit court of ap-

peals, and the record filed here, fairly call for and make appropriate a definite answer to the following questions.

Is the Declaratory Judgment Act of June 14, 1934, inflexible direction to the district courts to try in that manner every actual controversy presented by a petition for a declaratory judgment? Or may a district court take into its consideration the circumstances of the particular case before it, or the situation or conduct of the parties, and exercise its discretion as to whether under the law it should declare a judgment at all in any particular case?

In exercising such discretion as it may have, of course, the court must be governed by fixed principles which may be adopted upon the subject, and not upon the mere caprice of the judge before whom the cause happens to be tried.

If discretion be denied the district courts, then when any person asserts against any other, out of court, a demand that would be of a justiciable nature if asserted in court, whether growing out of contract, property rights or tort, then the law would be that every controversy must be determined by a declaratory proceeding if either party demands it before ordinary suit is brought by the potential plaintiff.

The language of the Declaratory Judgment Act is that "the courts of the United States shall have power upon petition", etc., "to declare rights and other legal relations of any interested party petitioning for such declaration."

It is respectfully submitted that to construe the words "shall have power" as an inflexible direction to try in that manner every controversy presented by such a petition would work a change in our jurisprudence

that was never intended by the congress. The consequences of such a change in judicial procedure seem to us beyond present comprehension.

When this law was enacted and its language was used, the state courts in the application of state declaratory judgment laws had recognized the court's discretion in such matters.

In *Newsum et al* v. *Interstate Realty Co. et al.*, 152 Tenn. 302, 278 S. W. 56, the Supreme Court of Tennessee, holding that the case before it was not a proper one for a declaratory judgment, said:

> "Recognizing that the courts have a very wide discretion under these acts, which should be exercised with the utmost caution, it has been said by good authority that 'a declaration may properly be refused if it can be made only after a judicial investigation of disputed facts.' Freeman on Judgments, Vol. 3 (5th Ed.), Par. 1356."

In *Ladner et al* v. *Siegel et al.*, 294 Pa. 368, 144 Atl. 274, based upon the Declaratory Judgment Act of Pennsylvania, which contained the same authority as here, "shall have power," the discretion of the court in such matters was recognized.

Washington Detroit Theater Co. v. *Moore*, 249 Mich. 673; 229 N. W. 618.

Ziegler v. *Pickett*, 46 Wyo., 283, 25 Pac. (2d) 391.

In *Lariviere* v. *Larocque*, 105 Vt. 460, 168 A. 559, 91 A. L. R. 1514, the Supreme Court of Vermont, in an action for the cancellation of a conveyance, speaks clearly and concisely of judicial discretion. We believe what is there said is applicable to proceedings under this statute. The court said:

"The application to a court of equity for the cancellation or rescission of agreements, conveyances and other instruments is not founded on an absolute right, as in most actions at law, but is rather an appeal to the sound discretion of the court. The discretion to be exercised is not an arbitrary or capricious discretion, but is a sound and reasonable one to be exercised according to what is reasonable and proper under the circumstances of the particular case."

The Vermont court there reaffirms, from its decision in *Bank of Bellows Falls* v. *Rutland and Burlington R. R. Co.*, 28 Vt., the following:

"The discretion of the chancellor, however, is not to be an arbitrary or a capricious, but a reasonable one, which will commend itself to the conscience of the chancellor, under all the circumstances of the particular case. The jurisdiction, in such a case, proceeds upon the ground of administering protective, or preventive justice, and the cases go upon the principle *quia timet*, as it is technically called."

Appeals are expensive matters in both money and time. The expense is sometimes greater than a particular litigant can bear. We respectfully submit that the questions presented in this motion are fairly presented by the record; that they must inevitably arise in this and the host of other declaratory judgment proceedings now pending; and that a definite answer to such questions by the decision and opinion of this court in this case will be helpful to courts and litigants in large numbers.

WHEREFORE, the respondents herein respectfully urge that this petition for rehearing and for modification of the decision and opinion be granted, and that

the questions presented by this motion be definitely disposed of by the opinion of this court.

Respectfully submitted,

REES TURPIN,
Solicitor for the Respondents.

Certificate of Counsel.

I, Rees Turpin, counsel signing the foregoing petition for rehearing and modification of the opinion, hereby certify that such motion is presented in good faith and not for delay.

REES TURPIN.

SUPREME COURT OF THE UNITED STATES.

No. 446.—October Term, 1936.

Aetna Life Insurance Company of Hartford, Connecticut, Petitioner, *vs.* Edwin P. Haworth and Cora M. Haworth.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[March 1, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The question presented is whether the District Court had jurisdiction of this suit under the Federal Declaratory Judgment Act. Act of June 14, 1934, 48 Stat. 955; Jud. Code, sec. 274D; 28 U. S. C. 400.[1]

The question arises upon the plaintiff's complaint which was dismissed by the District Court upon the ground that it did not set forth a "controversy" in the constitutional sense and hence did not come within the legitimate scope of the statute. 11 F. Supp. 1016. The decree of dismissal was affirmed by the Circuit Court of Appeals. 84 F. (2d) 695. We granted certiorari. November 16, 1936.

From the complaint it appears that plaintiff is an insurance company which had issued to the defendant, Edwin P. Haworth, five policies of insurance upon his life, the defendant Cora M. Haworth being named as beneficiary. The complaint set forth the

[1] The Act provides:

"(1) In cases of actual controversy the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

"(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

"(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not".

terms of the policies. They contained various provisions which for the present purpose it is unnecessary fully to particularize. It is sufficient to observe that they all provided for certain benefits in the event that the insured became totally and permanently disabled. In one policy, for $10,000, issued in 1911, the company agreed, upon receiving the requisite proof of such disability and without further payment of premiums, to pay the sum insured and dividend additions, in twenty annual instalments, or a life annuity as specified, in full settlement. In four other policies issued in 1921, 1928 and 1929, respectively, for amounts aggregating $30,000, plaintiff agreed upon proof of such disability to waive further payment of premiums, promising in one of the policies to pay a specified amount monthly and in the other three to continue the life insurance in force. By these four policies the benefits to be payable at death, and the cash and loan values to be available were to be the same whether the premiums were paid or were waived by reason of the described disability.

The complaint alleges that in 1930 and 1931 the insured ceased to pay premiums on the four policies last mentioned and claimed the disability benefits as stipulated. He continued to pay premiums on the first mentioned policy until 1934 and then claimed disability benefits. These claims, which were repeatedly renewed, were presented in the form of affidavits accompanied by certificates of physicians. A typical written claim on the four policies is annexed to the complaint. It states that while these policies were in force the insured became totally and permanently disabled by disease and was "prevented from performing any work or conducting any business for compensation or profit"; that on October 7, 1930, he had made and delivered to the company a sworn statement "for the purpose of asserting and claiming his right to have these policies continued under the permanent and total disability provision contained in each of them"; that more than six months before that date he had become totally and permanently disabled and had furnished evidence of his disability within the stated time; that the annual premiums payable in the year 1930 or in subsequent years were waived by reason of the disability and that he was entitled to have the policies continued in force without the payment of premiums so long as the disability should continue.

With respect to the policy first mentioned, it appears that the insured claimed that prior to June 1, 1934, when he ceased to pay

premiums, he had become totally and permanently disabled; that he was without obligation to pay further premiums and was entitled to the stipulated disability benefits including the continued life of the policy.

Plaintiff alleges that consistently and at all times it has refused to recognize these claims of the insured and has insisted that all the policies had lapsed according to their terms by reason of the non-payment of premiums, the insured not being totally and permanently disabled at any of the times to which his claims referred. Plaintiff further states that taking loans into consideration four of the policies have no value and the remaining policy (the one first mentioned) has a value of only $45 as extended insurance. If, however, the insured has been totally and permanently disabled as he claims, the five policies are in full force, the plaintiff is now obliged to pay the accrued instalments of cash disability benefits for which two of the policies provide, and the insured has the right to claim at any time cash surrender values accumulating by reason of the provisions for waiver of premiums, or at his death, Cora M. Haworth, as beneficiary, will be entitled to receive the face of the policies less the loans thereon.

Plaintiff thus contends that there is an actual controversy with defendants as to the existence of the total and permanent disability of the insured and as to the continuance of the obligations asserted despite the non-payment of premiums. Defendants have not instituted any action wherein the plaintiff would have an opportunity to prove the absence of the alleged disability and plaintiff points to the danger that it may lose the benefit of evidence through disappearance, illness or death of witnesses; and meanwhile, in the absence of a judicial decision with respect to the alleged disability, the plaintiff in relation to these policies will be compelled to maintain reserves in excess of $20,000.

The complaint asks for a decree that the four policies be declared to be null and void by reason of lapse for nonpayment of premiums and that the obligation upon the remaining policy be held to consist solely in the duty to pay the sum of $45 upon the death of the insured, and for such further relief as the exigencies of the case may require.

First.—The Constitution limits the exercise of the judicial power to "cases" and "controversies". "The term 'controversies', if

distinguishable at all from 'cases', is so in that it is less comprehensive than the latter, and includes only suits of a civil nature". Per Mr. Justice Field in *In re Pacific Railway Commission*, 32 Fed. 241, 255, citing *Chisholm* v. *Georgia*, 2 Dall. 431, 432. See *Muskrat* v. *United States*, 219 U. S. 346, 356, 357; *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716, 723, 724. The Declaratory Judgment Act of 1934, in its limitation to "cases of actual controversy", manifestly has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense. The word "actual" is one of emphasis rather than of definition. Thus the operation of the Declaratory Judgment Act is procedural only. In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to establish. *Turner* v. *Bank of North America*, 4 Dall. 8, 10; *Stevenson* v. *Fain*, 195 U. S. 165, 167; *Kline* v. *Burke Construction Co.*, 260 U. S. 226, 234. Exercising this control of practice and procedure the Congress is not confined to traditional forms or traditional remedies. The judiciary clause of the Constitution "did not crystallize into changeless form the procedure of 1789 as the only possible means for presenting a case or controversy otherwise cognizable by the federal courts". *Nashville, Chattanooga & St. Louis Ruy. Co.* v. *Wallace*, 288 U. S. 249, 264. In dealing with methods within its sphere of remedial action the Congress may create and improve as well as abolish or restrict. The Declaratory Judgment Act must be deemed to fall within this ambit of congressional power, so far as it authorizes relief which is consonant with the exercise of the judicial function in the determination of controversies to which under the Constitution the judicial power extends.

A "controversy" in this sense must be one that is appropriate for judicial determination. *Osborn* v. *United States Bank*, 9 Wheat. 737, 819. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. *United States* v. *Alaska S. S. Co.*, 253 U. S. 113, 116. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. *South Spring Gold Co.* v. *Amador Gold Co.*, 145 U. S.

300, 301; *Fairchild* v. *Hughes*, 258 U. S. 126, 129; *Massachusetts* v. *Mellon*, 262 U. S. 447, 487, 488. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. See *Muskrat* v. *United States, supra; Texas* v. *Interstate Commerce Commission*, 258 U. S. 158, 162; *New Jersey* v. *Sargent*, 269 U. S. 328, 339, 340; *Liberty Warehouse Co.* v. *Grannis*, 273 U. S. 70; *New York* v. *Illinois*, 274 U. S. 488, 490; *Willing* v. *Chicago Auditorium Association*, 277 U. S. 274, 289, 290; *Arizona* v. *California*, 283 U. S. 423, 463, 464; *Alabama* v. *Arizona*, 291 U. S. 286, 291; *United States* v. *West Virginia*, 295 U. S. 463, 474, 475; *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324. Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. *Nashville, Chattanooga & St. Louis Rwy. Co.* v. *Wallace*, *supra*, p. 263; *Tutun* v. *United States*, 270 U. S. 568, 576, 577; *Fidelity National Bank* v. *Swope*, 274 U. S. 123, 132; *Old Colony Trust Company* v. *Commissioner*, *supra*, p. 725. And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required. *Nashville, Chattanooga & St. Louis Rwy. Co.* v. *Wallace*, *supra*, p. 264.

With these principles governing the application of the Declaratory Judgment Act, we turn to the nature of the controversy, the relation and interests of the parties, and the relief sought in the instant case.

Second.—There is here a dispute between parties who face each other in an adversary proceeding. The dispute relates to legal rights and obligations arising from the contracts of insurance. The dispute is definite and concrete, not hypothetical or abstract. Prior to this suit, the parties had taken adverse positions with respect to their existing obligations. Their contentions concerned the disability benefits which were to be payable upon prescribed conditions. On the one side, the insured claimed that he had become totally and permanently disabled and hence was relieved of the

obligation to continue the payment of premiums and was entitled to the stipulated disability benefits and to the continuance of the policies in force. The insured presented this claim formally, as required by the policies. It was a claim of a present, specific right. On the other side, the company made an equally definite claim that the alleged basic fact did not exist, that the insured was not totally and permanently disabled and had not been relieved of the duty to continue the payment of premiums, that in consequence the policies had lapsed, and that the company was thus freed from its obligation either to pay disability benefits or to continue the insurance in force. Such a dispute is manifestly susceptible of judicial determination. It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts.

That the dispute turns upon questions of fact does not withdraw it, as the respondent seems to contend, from judicial cognizance. The legal consequences flow from the facts and it is the province of the courts to ascertain and find the facts in order to determine the legal consequences. That is every day practice. Equally unavailing is respondent's contention that the dispute relates to the existence of a "mutable fact" and a "changeable condition—the state of the insured's health". The insured asserted a total and permanent disability occurring prior to October, 1930, and continuing thereafter. Upon that ground he ceased to pay premiums. His condition at the time he stopped payment, whether he was then totally and permanently disabled so that the policies did not lapse is not a "mutable" but a definite fact. It is a controlling fact which can be finally determined and which fixes rights and obligations under the policies. If it were found that the insured was not totally and permanently disabled when he ceased to pay premiums and hence was in default, the effect of that default and the consequent right of the company to treat the policies as lapsed could be definitely and finally adjudicated. If it were found that he was totally and permanently disabled as he claimed, the duty of the company to pay the promised disability benefits and to maintain the policies in force could likewise be adjudicated. There would be no difficulty in either event in passing a conclusive decree applicable to the facts found and to the obligations of the parties corresponding to those facts. If the insured made good his claim the decree establishing his right to the disability benefits, and

the continuance of the policies in force during the period of the proved disability, would be none the less final and conclusive as to the matters thus determined even though a different situation might later arise in the event of his recovery from that disability and his failure after that recovery to comply with the requirements of the policies. Such a contention would present a distinct subject matter.

If the insured had brought suit to recover the disability benefits currently payable under two of the policies there would have been no question that the controversy was of a justiciable nature, whether or not the amount involved would have permitted its determination in a federal court. Again, on repudiation by the insurer of liability in such a case and insistence by the insured that the repudiation was unjustified because of his disability, the insured would have "such an interest in the preservation of the contracts that he might maintain a suit in equity to declare them still in being". *Burnet* v. *Wells*, 289 U. S. 670, 680; *Cohen* v. *N. Y. Life Insurance Co.*, 50 N. Y. 610, 624; *Fidelity National Bank* v. *Swope, supra.* But the character of the controversy and of the issue to be determined is essentially the same whether it is presented by the insured or by the insurer. Whether the District Court may entertain such a suit by the insurer, when the controversy as here is between citizens of different States or otherwise is within the range of the federal judicial power, is for the Congress to determine. It is the nature of the controversy, not the method of its presentation or the particular party who presents it, that is determinative. See *Gully* v. *Interstate Natural Gas Co.*, 82 F. (2d) 145, 149; *Travelers Insurance Co.* v. *Helmer*, 15 F. Supp. 355, 356; *New York Life Insurance Co.* v. *London*, 15 F. Supp. 586, 589.

We have no occasion to deal with questions that may arise in the progress of the cause, as the complaint has been dismissed *in limine.* Questions of burden of proof or mode of trial have not been considered by the courts below and are not before us.

Our conclusion is that the complaint presented a controversy to which the judicial power extends and that authority to hear and determine it has been conferred upon the District Court by the Declaratory Judgment Act. The decree is reversed and the cause is remanded for further proceedings in conformity with this opinion.

It is so ordered.